

FREE SPEECH ON THE JOB JOEL SELIGMAN

THE NATION

NOVEMBER 27, 1976

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**PROFESSIONAL MALPRACTICE
FIRST DOCTORS, NOW LAWYERS
ROBERT E. KROLL**

The Black Constituency

**HOW CARTER
SHOULD PAY HIS DEBT**

J. K. Obatala

**THE EXECUTIVE AGENCIES
REORGANIZATION vs. 'SUNSHINE'
HAROLD C. RELYEA**

The Legend Maker: Billy the Kid/FREDERICK TURNER

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LETTERS

J.P. Stevens: the real issues

Milwaukee, Wis.

The bitter struggle between the textile workers, their union, and J.P. Stevens and Co. illuminates some of the ideological and strategic limitations of mainstream American trade unionism [see Ed McConville's "The Southern Textile War," *The Nation*, Oct. 2].

It is no doubt true that Stevens's negotiators won't permit a dues checkoff or won't agree to third party arbitration of contract disputes precisely because they know the union leadership will not come to terms unless these demands are at least partially satisfied.

But advocates of militant rank-and-file unionism must sense the unpleasant irony in the situation: a notorious anti-union employer is able to stall the initial formation of a workers' organization by exploiting the union leadership's commitment to proposals which aren't particularly useful to the worker on the shop floor.

The checkoff is nothing more than an efficient means of collecting dues without the necessity of having to continually persuade the workers to renew their commitment to the union. But what's so bad about constantly "building the union," particularly when dealing with an employer like J.P. Stevens in the political economy of the South? . . .

Labor arbitration is an institution which preserves the existing social relations of production. Disputes are resolved by "experts." . . . Ordinary workers don't influence that process.

It is not true that the only alternative to arbitration is the strike. Like any other contract, the labor contract can be enforced in court by juries whose membership more often than not includes other working people. . . .

Giving the workers the option to strike or sue gives them a fuller opportunity to shape the conditions of their work lives. Their close-to-home assessment of costs and benefits will determine strategy rather than the less immediate intense calculations of trade union "professionals." . . .

If J.P. Stevens is going to say no, never, then let it be with respect to demands which distribute the income of enterprise justly and give workers . . . the ability to control the exercise of their labor power. This war should become a struggle for a worker-controlled trade unionism. There is nothing to lose.

David Loeffler

Carter and the NAACP

Riverside, Conn.

The fact about the election of Governor Carter not generally mentioned is that the great-grandsons and grandsons of slaves voted overwhelmingly for the grandson of slave owners. If it had not been for the black vote Carter would have been defeated. The National Association for the Advancement of Colored People has appointed a committee to confer with Carter to get him to promise—and to carry out the promise—to appoint more qualified blacks and to higher positions in the administration than was done by previous Presidents.

Alfred Baker Lewis

National Treasurer Emeritus, NAACP

vote for Clurman

New York City

In an era when most criticism of the arts seems to me to range from pessimism to approval of the trivial or the obscure, the theatre essays of Harold Clurman provide clarity, sanity and significance, along with a balanced appraisal of the work under consideration.

I'm moved to say this by a new example of his talent in his review of the Film Festival for your magazine [Oct. 23 and 30]. The best way to exemplify his attitude is to quote him: "I didn't have to like them to enjoy them." If only more reviewers had his humane objectivity! *E.E. Spitzer*

EDITORIALS

Carter's Show of Concern

Two weeks after the national election there has been one very positive sign about the direction of President-elect Carter's ideas on foreign policy. It coincides with two depressing reminders of the Nixon-Ford years, now fortunately drawing to a close. The good news comes from Carter's press conference of November 15, in answer to a question about his intentions as to "human rights" in the world.

In his response, Carter could hardly have been more forthright and correct. He mentioned Chile twice, declaring that "the attitude of our nation's people and our government toward another foreign government like Chile's would be very seriously affected by an absence of concern for human rights." Unspoken, but quite clearly there, was his own attitude of condemnation toward the brutal behavior of the Pinochet military dictatorship. He remarked on the fact that a wholly disproportionate share of Food for Peace allocations was being sent to Chile and suggested in strong, if diplomatic, language that in his administration such matters would be "determined or affected certainly by the attitude of [such] countries toward human rights."

Given the dismaying history of American policy toward Chile in the past eight years, those words of the President-elect amount to a gale of fresh air. They are so striking because of the contrast with the long years of corrupt accommodation by the Republican administration to the world's "anti-Communist" dictatorships. Thus, on foreign policy at least, Carter is off to a most reassuring start.

The dismal reminders of bankrupt foreign policies come from the United Nations and from Geneva. At the U.N., President Ford stuck to Henry Kissinger's rusty guns when he ordered the hapless Ambassador Scranton to veto the admission of newly unified Vietnam to that theoretically all-inclusive body. The decision was wrong, of course, but what was truly offensive about it was the reason our government gave for its veto. It was that old and discredited argument that Vietnam was guilty of a "refusal" to give "a fuller accounting" of the Americans still listed as "missing in action."

As Robert Musil wrote in this magazine (October 9) in an article entitled "Manipulating the MIAs," there is no evidence that Hanoi is holding back information on the fates of the several hundred men still unaccounted for, in order to "obtain economic and political advantage," as Scranton was ordered to put it. The numbers of MIAs are low for such a war, as the best authorities admit, and the fact that 82 per cent of them were members of air crews lost in combat over the jungle tells the sad but inevitable story that the manner and place of their deaths can probably never be known. The truth is that our government cannot bring itself to shake hands with our former "enemies" in Indochina. The Ford administration is leaving that task to the Carter government for obvious and discreditable reasons.

In Geneva, the fabric hastily woven by Secretary of State Kissinger's last shuttle is unraveling fast. Rhodesia's stubbornly racist Prime Minister has gone home (where

he was pictured ringing Salisbury's "Liberty Bell" in a revolting parody of our own symbol of independence). The black Rhodesians have made it quite clear that they will have none of the tokenism Smith is offering them. And, as *The New York Times* reported on November 16, the whole Geneva "negotiation" was made possible by some highly questionable Kissinger tactics.

The *Times* reporter puts it delicately, writing that our Secretary of State, in his representations to both blacks and whites on Rhodesia, "chose to be ambiguous when candor might have risked failure" of an agreement to negotiate. In plain language, Kissinger lied to both sides in order to create an illusion of common ground. The inevitable result of this "peacemaking" tactic, invented just before our own election, was failure. It was Kissinger's last act and one of his worst.

In the light of these two dismal performances on the world's stage, we are entitled to more than a little optimism after Carter's strong words on Chile.

The Bureaucracies Forbear

It is nice of the federal bureaucracy to allow President-elect Carter a bit of leeway in the short time before he takes office. In at least two instances this rolling juggernaut of continuity has shown a kindly forbearance in refraining from locking the new man into positions he would have a hard time getting out of after January 20. These examples of abnegation are worth noting because the fact that, in both cases, the administrative machine could have frozen Carter's "options" tells a good deal about the real amount of freedom to act that this new President will possess. It will not be all that much, as history should have taught us, and this despite the inevitable promises of the campaign.

In one case Carter was told that he would not be "frozen in concrete" and in the other that they would not "box him in." (The figures of speech make a President-elect sound like a Houdini, which is perhaps not entirely inappropriate.) The truly important surcease was granted him by Arthur Burns, chairman of the Federal Reserve Board. Our chief central banker had chosen the week after the election, while Carter's pledge to prime the economic pumps was still echoing, to tell a Congressional committee that any such attempt to speed recovery might be dangerous as well as unnecessary.

That line threatened a collision between the head of the independent agency that controls the money supply and the man elected to get things moving again in the economy. But Burns quickly saw that his threats were, if not premature, at least graceless, and he back-pedaled, letting it be known that concrete was not his chosen weapon for the battles to come and that he expected to work harmoniously with the new administration.

As Rep. Henry Reuss, chairman of the House Committee on Banking, Currency and Housing wrote in *The Nation* of October 16, "We must stop thinking of the Fed as simply a 'bankers' bank.' . . . It is a government agency, and our laws should treat it as such." Reuss pointed to a classic recent case when the monetary policy of the Federal Reserve System clashed with the fiscal policy of the government. It happened in 1968 when

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Congress voted a tax increase to help cool off an economy overheated by the war in Vietnam and the Fed reversed this sound policy by increasing the money supply, with the inevitable inflationary result.

And so, for the moment, the President-elect seems to be freed from the Fed's concrete jacket. As for the "box," the Air Force will let him breathe a bit before trying to enclose him again in the commitment to produce the B-1 bomber—or so it appears. Candidate Carter called the B-1 albatross "an example of a proposed system which should not be funded and would be wasteful of the taxpayers' dollars" (but other of his statements on this defense boondoggle show a certain ambivalence). The legal status of the B-1 is complicated but, in essence, it would allow the Air Force to start up production at a rate which it would be expensive to annul. Hence the "box" built for Carter.

In its benevolence toward the President-elect, the Air Force seems to have decided to extend its contract with the manufacturer, Rockwell International, on such terms that Carter would not have to make the final go-or-stop decision in his first two weeks in office. This means more money is to be spent on the B-1 project, increasing the pressure to get into production, but at least it seems to give him some choice in the matter.

An Air Force general is quoted as saying that, after all, "We have to work with the new administration, and it is not in our interest" to win that kind of triumph. Note the word "with"; it should, of course, be "for." But the military and its civilian flunkies have been riding so high for so long that they fall easily into such constitutional errors of thought and speech.

Carter might do himself—and all of us—a good turn if he began his Presidency by giving the Pentagon a lesson in who is boss. That instructive rap on the knuckles could well be administered by his cancellation of the contract with Rockwell for the B-1 dodo.

Both the Federal Reserve and the Air Force, in these two cases, are flexing their muscles and preparing to take on the new President. He would do well to show great firmness right away in dealing with these powerful bureaucratic agencies. He was elected to do just that.

Unions: the Other Transition

American trade unionism has entered a period of transition not unlike—and closely linked to—the one in Washington. It is, of course, a more diffuse process, one that will be measured in years rather than months, but the similarities to the Ford-Carter changeover are suggestive. The leaderships of a number of major unions are changing, and in many cases the new men are more dynamic, if not more "progressive," than the old.

Arnold Miller's victory over Tony Boyle of the United Mine Workers began the change. Recently it has speeded up, with new leaders in the Electrical Workers, the Machinists, the ILGWU, the Amalgamated Clothing Workers and several of the building trades unions. Leonard Woodcock of the Auto Workers will soon step down. And two of the most significant changes will probably come next year: George Meany is widely expected to retire as head of the AFL-CIO, and Ed Sadlowski's

election as president of the Steelworkers would if it occurs represent a radical new thrust.

One union, however, never seems to change, except for the worse. We refer to the International Brotherhood of Teamsters, the nation's biggest union. A.H. Raskin's splendid summary of the state of the Teamsters in the November 7th *New York Times Magazine* can leave one only profoundly discouraged about the chances for an internal revolt against Frank Fitzsimmons and his corrupt but all-powerful henchmen.

But here the transitions in the labor movement and in the federal government could well complement each other, to the benefit of everyone. For the last eight years the Teamster autocracy has sheltered from foul weather in the White House. The Nixon-Fitzsimmons connection has never been satisfactorily explored, but all evidence indicates that the labor boss gave Nixon his support in 1972 in return for the deal that released Hoffa from prison but prevented him from running for union office. Charles Colson, who helped arrange that swindle, became not only a penitent Christian but a Teamster lawyer when he left the White House. The links go on and on, and the investigations of Teamster pension funds now coming to fruition under Ford are belated at best.

The Carter administration should place itself in unequivocal opposition to the Teamster thugs, big and small, who have so degraded both the labor movement and the nation's highest political office. There are numerous methods (short of the strong-arm tactics used by Robert Kennedy to "get Hoffa") that Carter could employ to press reform on the Brotherhood. And the new leaders of American labor should realize that their predecessors' resistance to major investigations of the Teamsters—resistance based partly on fear of guilt by association—was ill-considered. In this context, Carter's choice for Secretary of Labor will be a good signal of his intentions. Given the right man, with strong support from the President and from union leaders who are sincerely interested in cleaning labor's dirty house, we just might see labor become a movement again, instead of an institution crippled by corruption, like so many others in this country.

When Every Day Is Christmas

The New York Times, a journal that prides itself on the seemliness of its advertising columns, printed a notice on November 11 from Flair, the "disposable" pen division of Paper Mate; parent company, Gillette. It was addressed to office managers and offered them four gifts—a thermometer/humidity meter, an electric drill, a safety kit and an AM/FM stereo radio/tape recorder—whose retail values were listed, respectively, as \$10.95, \$34.95, \$63.94 and \$149.50, and which are to be presented in gratitude for purchases of 1, 3, 6 and 12 gross of pens.

Now purchasing agents are not exactly unaccustomed to the benevolence of suppliers with whom they do business—it is common practice in the commercial world and is called a kick-back. So the Flair ad is merely making overt what "everyone does" in any case, and the *Times* may think that a healthy development.

One may confidently expect that before long BIC will be advertising its assortment of goodies for buyers who

smile on their pens. Then there are firms that sell office stationery, typewriters, printing and, at the top of the heap, computer systems. A good-sized digital computer should be worth at least a summer cottage in the Adirondacks to the lucky purchasing agent. All these tips (that acronym might be paraphrased to mean "to insure preference") will be publicized as "absolutely free" (the word appears six times in the Flair ad) but anyone smart enough moneywise to be a purchasing agent knows that something for nothing is the commercial equivalent of perpetual motion. Somewhere along the line, the drills and fire extinguishers and stereo components get blended into the overhead—in short, it's a kind of inflation, for which the public pays and gets no gifts.

Flair, true to its name, has achieved a stylish jump on its competition, and just may, without intending, have performed a social service. If, as we foresee, this sort of overt bribery becomes commonplace in the press and on the air, the public may get the notion that it is playing Santa Claus with a recklessness it can hardly afford, and consign the word "free" to the category of "absolutely no obligation," "money back guarantee" and "while they last." And the Internal Revenue Service may become peculiarly inquisitive about the tax returns of people whose work it is to spend large amounts of their employers' money. Some of our best friends are purchasing agents, but that doesn't mean we want to contribute to their stock of home gadgets every time we buy a felt-tip pen.

Hannah Josephson

Hannah Josephson, biographer, translator, editor, helpmeet, housewife and good neighbor, died on October 29. She was 76 and had been ill since early in July.

Hannah was born in New York City, the daughter of A.D. Geffen, an upright, impractical bookseller, and his wife, Anna. She was the next-to-youngest and blondest of a big family, mostly of girls, and all music-loving. She attended Hunter College and the Columbia Graduate School of Journalism, then went to work as a reporter for Hearst's morning newspaper, the *New York American*.

She was married in 1920 to Matthew Josephson, the widely known biographer. Six years ago they celebrated their golden wedding anniversary.

The Josephsons spent much of their early married life in Paris, where they had many friends among the Surrealist writers and painters. In 1929 they moved to Sherman, Conn. Their two sons attended the Sherman School, and Hannah served for some years on the school board.

She was not a "liberated woman" in the style of the 1970s; she was a good wife, mother, housekeeper, hostess, but she was also a breadwinner with a solid career in writing and editing, and she found time as well to work quietly for the victims of the McCarthy era. Nobody else could have done all that without a series of nervous breakdowns. Hannah had ulcers, but she smiled and went on bustling.

Two of her books were *The Golden Threads* (1949), a pioneering study of the early New England mill girls that should be reprinted—those girls worked no longer hours than Hannah did—and *Jeannette Rankin: First Lady in Congress* (1974), an honest and sympathetic biography. Before her last illness, Hannah had nearly finished another biography, that of the feminist, Katharine Anthony, a friend of long standing.

One of her translations, a book-club choice of 1947, was of *The Tin Flute*, by Gabrielle Roy. She collaborated with me on *Aragon: Poet of the French Resistance* (1945), and with her husband on *Hero of the Cities*, a biography of Alfred E. Smith which won the Van Wyck Brooks Prize for 1969. From 1949 until her retirement in 1965, Hannah was librarian of the American Academy of Arts and Letters and editor of its publications.

Today I opened our copy of *Jeannette Rankin* and read the printed dedication: "For my sisters, old friends and allies." Below it, in her round hand, Hannah had written, "—and for my other dear sister and friend Muriel, as well as my hereditary brother Malcolm." Hereditary? I knew and loved Hannah as a brother for fifty-seven years and now I miss her and mourn her with the other survivors.

MALCOLM COWLEY

Sweden: Cat & Mouse with the Atom

Robert Skole

Stockholm

Sweden's new Prime Minister, Thorbjörn Fälldin, has backed down completely on his campaign promises to phase out nuclear power and prevent any more reactors from being started up in Sweden. The election, in which the pro-nuclear Social Democratic government was defeated after forty-four years in office, was the first national election anywhere in which the nuclear question was a major issue. Thus, the reversal is a bitter disappointment to anti-nuclear forces in this country. (See Skole: "Sweden's Nuclear Election," *The Nation*, October 9.)

Fälldin, leader of the Center Party, has organized a three-party coalition government, with the Conservative

and Liberal Parties. After two weeks of negotiations the three hammered out a government program and presented it to Parliament on October 8. It then became evident that Fälldin had been forced to give ground—a lot of ground—to the Conservatives and Liberals, who support nuclear energy. The program will allow the nation's five operating reactors to continue without any changes, permit a sixth reactor to start up this month and let work continue on four reactors now under construction and three more that are approved but in the blueprint stage.

Fälldin, who solemnly pledged that he would never, never compromise on his anti-nuclear demands, readily admits that the program was a compromise. But now he has started to repeat a new Fälldinian slogan: "We have halted the march into a nuclear society." In reality, he has halted nothing. The march goes on.

Robert Skole has been a foreign correspondent in Sweden for ten years.

Former Prime Minister Olof Palme called Fälldin's backdown "the greatest fraud in Swedish political history." (He used the Swedish word "*svek*," which is difficult to translate since it means a breach of a morally binding promise.) And at least one Center Party politician, a young city councilman on the island of Gotland, has quit the party and resigned from all politics because of Fälldin's behavior.

The government program does place some conditions on new reactor start-ups. Sydkraft AB, a private/municipal utility, will have to prove it has a fuel reprocessing contract for its Barsebäck-2 reactors, slated to be loaded this month. That is not an especially difficult condition: the Swedish Nuclear Fuels Supply Corp., owned by utilities operating nuclear stations, has reprocessing contracts for two reactors and a letter of intent for reprocessing on all reactors under construction.

Fälldin had clearly pledged in the campaign that he would never allow another reactor to be "contaminated" by radioactivity. By placing the reprocessing contract condition on Sydkraft's operation, Fälldin backed out of his promise, saying, "Now it's up to the utility to decide if it wants to operate under these new conditions."

Another condition in the government program applies to the other four reactors under construction. Before start-up, the owners must have not only a reprocessing contract; they must also "show how and where an absolutely safe storage of radioactive waste can be effected." "To whom must they show this?" Fälldin was asked. "To the authorities," he replied.

The "authorities" would be the Swedish Nuclear Power Inspectorate, an agency that licenses reactors. It undoubtedly could be easily convinced that a waste storage system can be "shown." The government program does not call for such a system to be available or built—only that it be "shown" how it could be done.

In short, Fälldin is handing responsibility over to the

nuclear industry and claiming that by so doing he acts in the interest of halting nuclear energy. It is hard to believe that such illogic is being offered to a country that is characteristically so logical.

Anti-nuclear forces—among them the Center Party Youth Organization—demonstrated against nuclear power at Government House shortly after the program was released. Olof Johansson, who was named Minister of Energy, a new Cabinet position, talked to the demonstrators outside the building. He said that he basically agreed with them, and that he too opposes nuclear power. A special commission, to be named, will prepare a draft energy program for presentation to Parliament in 1978. It will also study possibilities of a consultative referendum on nuclear power if there is a split among the coalition parties. (In Sweden, referendums are rare, and are used only to guide Parliament.)

Although a revised energy plan for 1978 is nothing new (the Social Democratic government had called for such a review in that year), the new coalition may have thought it was cleverly gaining time with the proposal. However, a showdown is near. A utility consortium building the two-reactor Forsmark station needs \$35 million of additional capital to continue the work. In the past, it has been no problem to raise money for nuclear projects. Now, a state pension fund, which is a major supplier of capital, has rejected the loan. Banks handling international bond issues say that, because the future of nuclear energy is uncertain in Sweden, they cannot lend money for such projects.

The utility consortium says it must have the money by December if it is not to stop work and lay off some 3,000 people. Trade unions, of course, are furious, and accuse Fälldin and the government of "playing cat and mouse" with nuclear energy.

The situation right now does not look bright for the coalition government. Fälldin's moralistic coat of anti-nuclear armor has vanished, along with his credibility. □

THE BLACK CONSTITUENCY

How Carter Should Pay His Debt

J.K. OBATALA

Momentous events in human history invariably give rise to new myths. If these are allowed to endure unchallenged, they become air bubbles in the structure of the new order, contributing ultimately to its collapse. Already, this process is evident in the wake of the recent Presidential elections.

The potentially harmful myth that has arisen out of the victory of Governor Carter over President Ford is that of a "solid South." The consensus seems to be that

J.K. Obatala was until recently associate professor and chairman of black studies at Long Beach (Calif.) State University. He was also a staff writer and editor in the Opinion Section of the Los Angeles Times. Mr. Obatala is now in the Southeast, where he is doing research for articles to be published in Harper's and The New York Times Magazine.

it was the return of the South to the Democratic fold after twenty years that put Carter in office. It is true that Carter carried every Southern state except Virginia, and that Mississippi clinched his electoral victory, but it was not the "Southern vote" as such that gave Carter the South (and the Presidency): it was the black vote.

The distinction is critical and urgent. The insidious notion of a new solid South obscures the President-elect's moral and political obligation to begin immediately to address the social and economic problems of the people who did most to put him in office—the black people. Their extraordinarily heavy turnout at the polls and nearly 100 per cent support of Carter surely made the difference. In Mississippi, for example, Carter won by only 12,000 votes out of 735,000. How could such a slim margin of victory be construed as a "solid" vote for Carter? It certainly would not be unreasonable to assume

that a majority of the whites in Mississippi voted for Ford. Indeed, that is the only rational assumption. "Blacks made the difference in Mississippi," said Al La Pierre, political director for the Alabama State Democratic Party, "and in the South generally."

Although La Pierre feels that Alabama would probably have gone Democratic even without the black vote, a look at what happened in Birmingham is instructive. Jefferson County, in which Birmingham is situated, is one of seven Alabama counties that went to President Ford. His margin of victory was 14,059 votes, out of the 217,090 cast. But it was the heavy white Republican and conservative Democratic vote that provided the crucial difference. By contrast, the city of Birmingham itself, which is nearly 50 per cent black, went to Carter.

And the situation in and around Birmingham is typical of the region as a whole. Where blacks were weak, Ford usually prevailed; where they were numerically strong, the Democrats came out on top. The point is that the white South went for Ford while the black South went for Carter.

Nor was the critical role of the black electorate confined to the South. "The nation's black voters," reported *Newsweek* (November 15), "went all but unanimously for Carter." In New York, for example, Carter got 94 per cent of the Afro-American vote, a trend which fell off by only 1 percentage point nationally. "Blacks provided the margin of victory," concluded Eddie N. Williams of the Joint Center for Political Studies in an interview with Paul Delaney of *The New York Times*, "in such key states as Pennsylvania, Maryland, Ohio, Missouri, Texas, Louisiana and Mississippi." This indicates that the influence of blacks outstripped even that of the white working class, about which so much has been written.

The support Carter received from white workers is one of the more positive signs of the 1970s. It could mark the beginning of the end of the self-defeating practice of voting race instead of interest and principle. And if that happens, we can look for the emergence of a truly new and exciting political force in America. Still, too much has been made of the President-elect's white working-class support in the South, as well as in the North. If it had been as strong as predicted, Carter would have taken more than 54 per cent of the Southern vote (according to NBC's estimate, as reported by *Newsweek*). And the fact that labor leaders could muster only 63 per cent of the potential national worker vote is also important. It helps to underscore, once again, the central role of blacks in bringing Carter to power.

This is not to imply that the President-elect owes everything to blacks and nothing to the rest of the electorate. The intent is to impress on the new administration and the nation the fact that, no matter what other help he acknowledges, Carter is indebted to black Americans. Moreover, that debt cannot be discharged by merely creating jobs and appointing a few middle-class blacks to high office. As the President of the United States, Carter will have a moral obligation to do whatever is necessary to protect everyone's right to earn a living, regardless of

the popular vote. That obligation affects the very physical existence of citizens; the right to work is not politically negotiable.

The same holds true for political appointments. Black Americans, like all other citizens, have a nonnegotiable right to participate in government at all levels. What matters most is the conceptual commitment, the guiding philosophy of the administration. That will determine which blacks get appointments and what kind of mandate they receive from the President. It is one thing to have a black who is competent; it is quite another to



Renault, Sacramento Bee

have one who is both competent and committed to improving the lot and protecting the interests of the common people as a whole. Barbara Jordan, for example, would make a superb nominee to just about any post, including that of Supreme Court Justice. But then, so would Elliot Richardson or Jerry Brown or countless other people who come to mind. And it is on that basis that the likes of Barbara Jordan, who is black, should be considered; not as a means of discharging a political debt to the masses of black Americans in the South or their expatriate counterparts in the Northern and Western United States.

Actually, the fact that black Southerners voted for Carter is only one measure of his obligation to them. The President-elect would be woefully remiss socially, morally, politically and historically, if he failed to draw a sharp distinction between those who are frantically jockeying for positions in Washington now and those who harvested his peanuts and made him rich; between those who were in Europe or attending college "up North" in the 1950s and 1960s and those whose blood and tears nurtured the seeds of the New South; between those who

assert their "qualifications" and those who have demonstrated their social commitment throughout the years as workers in the cause that made it possible for black Southerners to vote and, therefore, for Governor Carter to become President.

By these latter criteria, a candidate for the strategically important post of U.S. Attorney General or Supreme Court Justice should be a person of the caliber of C.B. King of Albany, Ga.—of whom Carter is very much aware. King is one of the few blacks in the nation who is even remotely qualified to attempt to fill the shoes of Thurgood Marshall. Though King is "qualified" to practice law in any court in the nation, he decided—before it was profitable, popular or physically safe to do so—to stay in the South and help lay the groundwork for the momentous events of November 2.

To make a man like King Attorney General, with a mandate to commit the resources of that office to a fight for equal justice for all Americans, would help satisfy Carter's debt to the black electorate. However, no matter who is appointed, the Carter administration owes black voters a commitment to extricate the Justice Department from its present alliance with the forces of racism and oppression. The notorious anti-busing policy of the Ford administration must be reversed immediately; and the government should terminate all legal action on behalf of school segregation. Moreover, the Justice Department, the Department of Health, Education, and Welfare, and all other branches of the government must be mobilized against the thinly veiled anti-black movement whose leaders and spokesmen pretend they are fighting "reverse discrimination." Intimidated by the moral support and encouragement given these champions of oppression by past administrations, some blacks made the serious error of abdicating their stand in favor of minimum quotas and timetables. Blacks got the idea of reserving slots for their students from white administrators who for years had been using the device to get fraternity members, foreign refugees, athletes, relatives, friends and political and business associates into major universities. The practice became "reprehensible" only when black militants muscled in on the action in the 1960s.

It is now incumbent on Mr. Carter to gather around him a group of blacks and whites who will stand up to the "backlash" that invariably results from any firm stand by the government in favor of policies that benefit oppressed people. The Carter administration is obligated, not just to create makeshift jobs that will vanish with the next Presidential election but to develop people who can go out into the marketplace and fend for themselves. This means breaking the cycle of (poor) black exclusion from American colleges and universities, whether it be done under the guise of "maintaining standards," the "merit system" or fighting "reverse discrimination." It means placing a limit on the number of "soul" radio stations that can operate in the black community, and forcing those that are there to offer intellectually stimulating programs, more useful information and a broader cross section of musical exposure for black youth. It

means calling a halt to the growing practice—especially in the South—of turning black high schools into industrial training camps ("comprehensive schools" is the current euphemism). It means financing trade schools and providing money for youth *after* they have attained a good general education, firmly rooted in literature, the arts, math, English and the social sciences. Then, there is the question of blacks in the space program. At a bare minimum, there is a need to launch a full-scale investigation into the absence of Afro-Americans from NASA at flight level and to make certain that the next phase of space exploration is fully integrated, sexually and racially, top to bottom.

This has been a sketchy and incomplete outline of those black interests that have gone unattended for the past twelve years. It may sound like a huge debt for one President to pay for gaining power, but when you look at what other groups, not to mention corporate interests, have gained at black expense, these things are a drop in the bucket. No mention has been made, for example, of the crime syndicate flourishing in the black community and the role of the criminal justice system in perpetuating that situation. Nor has anything been said of the scandalous black underrepresentation in the areas of communications and the cultural vocations.

The President himself obviously cannot do all these things for blacks; and it is not expected of him. Rather, the black Southern electorate—and its counterpart elsewhere—expects the Carter administration to generate a climate of participatory democracy in which a constructive black activism can thrive once again; to employ the enormous political, legal and financial resources of the federal government on behalf of those blacks who are acting within their rights under the Constitution to pursue their legitimate interests. Blacks expect the President-elect to make a serious effort to dispel the notion, once and for all, that America is a "white country"; to conduct government in a manner that reflects multi-racism, which means that there are no white preserves, no nooks and crannies in the private or public sector that belong, by right, exclusively to white Americans. This can be done most expeditiously by making appointments and initiating social programs based on the concept that black social, material and political advancement is not a "gain," or a privilege conferred at someone else's expense but a long overdue right—one that others have, in the past, enjoyed at the expense of blacks.

It is against this backdrop that the myth of the solid South looms most menacingly over the black political future. After decades of fighting (and dying) for the chance to levy a legitimate political claim, in addition to still-outstanding moral liens, against the system, there can be no blurring of the issues. The terms must be clear and precise. It was the black vote, not the "solid South" or the "Old Democratic Coalition" that made the difference between victory and defeat for Governor Carter. Once this is understood, and its meaning fully grasped, the air bubbles of myth and misunderstanding will have been effectively removed from the structure of the New Political Order. □

FIRST DOCTORS, NOW LAWYERS

ROBERT E. KROLL

Legal malpractice, negligence committed by lawyers, is coming home to roost on the profession in the next two or three years. The flood of lawsuits aimed at lawyers now welling up could create jurisprudential havoc. Nevertheless, the profession is doing almost nothing to prevent a crisis which, in the words of one observer, "will make the medical malpractice crisis look trivial by comparison." (George King, *California Bar Journal*, September 1975.)

And like the doctors' patients, the consumers of legal services will be hit with the soon-to-be staggering professional liability insurance premiums which attorneys will pass along in their fees. Worst of all, the quality of legal services may take a sudden drop. The profession seems disinclined to take a stout-hearted stand against incompetence—that would be fratricide. Instead, lawyers who are aware of the problem speak not of upgrading the practice of law but of practicing more "defensive" law, avoiding claims against them by covering their misdeeds and ineptitude with a shower of cross-complaints and no-liability waivers.

Some recent dramatic and precedent-setting cases of legal malpractice have expanded the scope, magnitude and duration of a lawyer's liability to his client and even to third parties affected by attorneys' advice, acts or decisions. Some examples:

¶ A New York lawyer was successfully sued for \$150,000 (later reversed on appeal) for carelessly referring one of his clients to a New Jersey personal injury lawyer who turned out to be a crook. The New Jersey lawyer, in handling the auto accident litigation case, settled for \$150,000, received a release from the client who was abroad, and absconded with the money. The referring lawyer was held liable because he didn't check the New Jersey man's credentials before sending his client to him. (*Tormo v. Yormark*, reported in *Legal Malpractice Reporter*, April 1976.)

¶ A Maryland state court awarded \$142,000 to a couple who sued their attorney for failing to get a guarantor's signature on a note, as required by a real estate contract of sale. The mistake cost the client a considerable sum of money, which loss they passed on to their attorney. (*Glasgow v. Hall*; *Legal Malpractice Reporter*, February 1976.)

¶ In *Smith v. Lewis*, a landmark case to be discussed more fully below, the president of the Sacramento Valley Bar Association lost a \$100,000 negligence suit (affirmed by the state Supreme Court) for failing adequately to research a legal issue in a divorce case. In ruling on the case, the high court stated, "even in doubtful matters, an attorney is expected to perform sufficient research to enable him to make an informed and intelligent judgment on behalf of his client."

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¶ The biggest malpractice award in history, \$26 million, was granted in Southern California to actress Doris Day; she sued two attorneys who were representing her and her husband in several business ventures. The case, needless to say, is still on appeal.

Lawyers know well what can happen when a litigious public becomes aware of a potential source of recompense for professional error or omission. Consequently, the profession has tried to keep the lid on the subject, and that makes it difficult to estimate the scope of the problem. However, the best estimates are that clients are suing their lawyers almost twice as often this year for negligence as they did in 1972 (*The Wall Street Journal*, February 3). *The Christian Science Monitor* reports a jump in legal malpractice suits of 40 per cent from 1974, and the *Washington Star*, after interviews with insurance company executives, claims a 50 per cent jump in the last year.

The Spring issue of the American Bar Association's *Barrister* magazine reports responses to a questionnaire sent to 1,000 members of the Missouri bar. From these data, it appears that between 1961 and 1971, 9.5 per cent of the attorneys had been the subject of at least one malpractice claim which ended in either a suit or out-of-court settlement. A similar study in Virginia shows that 13.6 per cent of attorneys had at least one such claim between 1964 and 1974. In San Francisco, the bar association reports that, of the 2,000 law firms surveyed, one in twenty have pending at least one claim alleging malpractice, for which a legal defense is being arranged. (One firm has thirty pending claims arising from one alleged act, and each claim may have to be defended separately.) At this rate, the San Francisco bar reports, "almost half of the law firms in San Francisco may have one or more malpractice claims over a ten-year period."

Increased payments for professional liability insurance are the best indicator of the growth of malpractice losses, since they are presumably based on actuarial data. The Insurance Services Office, a rating agency for insurance companies, has recommended increased legal malpractice rates of 500 per cent in Arizona and South Dakota (where lawyers have paid as little as \$60-to-\$90 a year for minimum coverage), 125 per cent in California, 225 per cent in Massachusetts and 300 per cent in Ohio.

The Travelers Insurance Company of Hartford, Conn., which two years ago contracted to cover 20,400 California attorneys under a five-year contract with the state bar, is demanding a 383 per cent increase in rates, which now average \$330. The state bar gained a court injunction to prevent the hike, charging the Travelers with breach of contract. Peter Sweetland, a company officer, said that, as of November 1, Travelers had \$9 million in estimated malpractice claims from California attorneys, for almost three years of coverage. Against this sum, the Travelers has collected premiums of \$9 million, "but this

kind of coverage has a long tail . . . claims could continue coming in long after the period for which that \$9 million in premiums was collected." Sweetland said losses could total twice the earned premium. With the Travelers' 20,000 assureds, each carrying at least \$100,000 liability limits, the total policy exposure is in excess of \$2 billion.

Why has there been such an increase in legal malpractice? The reasons are largely the same as those for medical malpractice. The upsurge can be attributed partly to an increase in consumer (and lawyer) awareness of the existence of attorney incompetence. The client feels entitled to a higher caliber of legal assistance in exchange for the relatively high cost of the services. Some lawyers have charged that clients use malpractice as a way to protest what they consider usuriously high fees. "They sue you for the amount of your insurance deductible . . . you have little choice but to reduce their fee by that amount," one lawyer lamented. And lawyers are becoming more actively involved in professional discipline. They are therefore more apt than ever before to be outraged by a colleague's incompetence and willing to testify to it in court—out of both self-respect and self-preservation.

The size of court and jury awards has increased geometrically in lawyer negligence cases. (They used to be significantly lower than those for medical malpractice.) This has drawn into the field attorneys in quest of lucrative "contingent" fees, which range from 30 to 50 per cent of a settlement.

Juries are reportedly more willing to rule in favor of a plaintiff suing a lawyer than a patient suing a doctor, according to malpractice lawyer Ed Friedberg, who has sued members of both professions with great success.* Friedberg told a rapt audience of trial lawyers in San Francisco earlier this year that in 75 to 85 per cent of jury verdicts in medical malpractice cases the doctor prevails, "but I expect in legal negligence cases, it will be the reverse (85 per cent of the jury verdicts will be for the plaintiff)."

But the recent growth in lawyer negligence litigation cannot be fully explained by the larger settlements, greater willingness of lawyers to testify against their fellows, heightened consumer consciousness, or the juries' pro-client (and anti-lawyer) leanings. The courts, too, are contributing to the incentive to sue lawyers by expanding the scope of professional liability, and insisting that the legal profession conform, in matters of negligence, with other occupational groups.

The law of attorney negligence has been greatly liberalized in recent years. It used to be said: "The lawyer is the only man in whom ignorance of the law is not punished." No more.

The classic legal malpractice case involved some blatant error or oversight by the attorney—missing a statute of limitations in filing a complaint, or failing to draft

*Friedberg is the lawyer who sued Dr. John Nork, the California orthopedic surgeon who has cost his insurance company more than \$13 million to date, with a possible \$8 million still at risk.

proper legal documents. These cases are relatively easy to prove because objective facts can be cited. Cases now before the courts involve much less concrete grounds for litigation. That is because the standards by which lawyer negligence is measured are changing.

The traditional standard of care expected of lawyers was set down more than a century ago. For example, *Gambert v. Hart* (1873) held that "A lawyer must exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise." That is a vague, if widely accepted, standard of legal quality: how much skill, prudence and diligence should an "ordinary" lawyer possess?

The answer came in the *Smith v. Lewis* decision handed down last year. In the course of a divorce settlement, attorney Jerome Lewis of Sacramento advised his client, Mrs. Rosemary Smith, that she was not entitled to half her husband's military retirement benefits under California's community property law. Her entitlement to these benefits, flowing from both federal and state pension sources was, at best, questionable at the time this advice was given. She therefore did not request or receive an allotment from her ex-husband's retirement benefits, which amounted to about \$800 a month for life. She later went to malpractice lawyer Friedberg, complaining that she felt she had been short-changed by the settlement. Friedberg filed a negligence suit against Lewis, charging him with failing to meet the minimum "standard of care" in exercising necessary research diligence to determine his client's right to a pension benefit.

The decision handed down by the California Supreme Court in *Smith v. Lewis* (1975) significantly expands that standard of care, probably sets a national precedent and adds four very explicit criteria for any California attorney to follow:

- (1) He must possess knowledge of those plain and elementary principles of law which are commonly known by *well-informed attorneys* (emphasis added).
- (2) He must discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.
- (3) Even with respect to an unsettled area of law [he must] undertake reasonable research in an effort to ascertain relevant legal principles.
- (4) Make an informed decision as to a course of conduct based upon an intelligent assessment of the problem.

In its written opinion the state's high court bemoaned Lewis's slovenliness. "Had the defendant conducted minimal research into either hornbook or case law, he would have discovered with modest effort that the state benefits were *likely to be treated* as community property and that federal benefits *at least arguably* belong to the community." (Emphasis added.) It was brought out at trial that Lewis had advised another client in an earlier case that the retirement benefits were community property.

"Thus the common duty of 'skill, prudence and diligence' had been elaborated to include the specific duties of basic knowledge, reasonable research and informed judgment," wrote George King in the September *California State Bar Journal*. A lawyer must be prepared to represent his client to the fullest extent of his capabilities,



Daumier

even if this requires challenging the laws in areas where there is controversy.

A lawyer's negligence liability is also being extended in two other forms: (1) the statute of limitations has been lengthened; and (2) he is now liable to parties other than his client. In many states the statute of limitations used to run from the date of the attorney's negligent act (it still does in some jurisdictions), and the length of the statute varies greatly from state to state. But under recent rulings, the statute does not begin until "a client actually suffers substantial damage" (*Budd v. Nixen*), or until "the client actually or constructively discovers the negligent act" (both California cases).

An old rule of law, known as "privity," held that attorneys are responsible only to their clients, but in recent years this too has fallen away. Now a lawyer "may be liable for damage caused by his negligence to a person intended to be benefited by his performance, irrespective of any lack of privity (not being a client) of contact between the attorney and the party to be benefited," *Donald v. Garry* (1971).

Legal malpractice will soon extend into every area of the law from wills and estates to criminal defense. So far, there has been no reported case of a money award for a negligent criminal trial defense except in the case of *Martin v. Hall* (1971) where a \$20,000 judgment was rendered, but was later reversed on appeal. In that case, a California man spent four years in state prison largely because his lawyer failed to raise the "double jeopardy" or "multiple prosecutions" defense at his trial on charges of assault with a deadly weapon. Martin had already pleaded guilty to misdemeanor counts of disturbing the peace and simple assault arising from the same alleged acts and served thirty days in jail for them. (The reversal on appeal was not based on the lack of finding

of negligence, but on the appeals court's finding that the judge had improperly instructed the jury as to the issues involved.)

Most observers of the legal malpractice situation are prompt to point out that the overriding cause of the coming crisis in negligence litigation is the abundance of legal malpractice itself. The lawyer population is as morally frail, venal and imperfect as any other group of people. Errors creep in; and outright fraud and deceit become ever more prevalent as opportunities expand.

It is clearly the responsibility of the profession to do more, much more, than it is now doing to weed out the incompetent and the dishonest from its membership. The organized bar acknowledges that duty by paying lip service. One example is provided by lawyer Friedberg, himself a crusader for a professional offensive against bad lawyers: "An attorney in Bakersfield was found guilty of fraud and conversion [theft] of a client's funds after a jury trial. The bar has never investigated him in the two years since the trial, and as far as I know it never will. The attorney is a member of a prominent law firm and he is known by every judge and attorney in Kern County. Something more must be done."

What will be done? The prospects are rather unsettling. Bar associations around the country are holding seminars and clinics on how to avoid legal malpractice, and in many instances the advice from within the profession can be summarized in three words: "Play it safe." That's the lawyers' equivalent of "defensive medicine"—do more lab work to establish an alibi, refer any questionable case to a specialist (and drop it yourself), and charge, baby, charge.

Defensive law will mean foisting more liability onto the

client's shoulders by requiring a client to waive or sign-off certain rights to sue if the lawyer's work or advice proves faulty. Lawyers have been urged by bar leaders to file counter-suits against their clients to discourage malpractice litigation. Many attorneys will feel compelled to specialize in one area of law to avoid the pitfalls of being "spread too thin" in general practice. Clients will be referred to specialists in every area of the law. This could have an obvious salutary effect, if only lawyers wouldn't use specialization to justify higher fees with no increase in the service performed. The way this works is insidious: any lawyer is *capable* of handling a divorce action competently. For an established client, most lawyers and law firms will grudgingly handle an occasional simple, uncontested divorce for \$250 to \$500. But firms fearing negligence suits might refer all such cases as a matter of policy to a specialist who charges \$750 to \$1,000. The higher fee incorporates a referral fee paid by the specialist for the business.

Referral fees are governed by the ABA's disciplinary rules in the Code of Professional Responsibility, which forbids such fees unless the client knows about it, the division is proportional to the amount of work performed, and the total fee "does not clearly exceed reasonable compensation for all legal services rendered." That rule

is commonly flouted, according to consumer advocate Herbert S. Denenberg in his *A Shopper's Guide to Lawyers*, published by the Pennsylvania Insurance Department. Denenberg explained: "Referral fees increase the cost of legal services . . . they also encourage lawyers to refer you to lawyers who also pay referral fees, not necessarily to the lawyers who can do the best job for you."

For lawyers, the message of the looming crisis in legal malpractice is clear: the client will not accept less than a lawyer's best efforts in his behalf. Many clients have come to realize that self-regulation within the professional bar is not going to make their lawyer do his best. Legal negligence suits will therefore be used by consumers as an adjunct to (or substitute for) largely ineffective professional watchdog groups that are supposed to impose sanctions on wayward members.

Concern over the quality of legal services in this country is not paranoid. Chesterfield Smith, former president of the ABA (1973), speaking of a "fringe of incompetents in the profession," is quoted (again, from Denenberg's *Guide*) as saying: "I wouldn't trust one lawyer in five to do anything." □

THE EXECUTIVE AGENCIES

REORGANIZATION vs. 'SUNSHINE'

HAROLD C. RELYEA

Washington

President Nixon's scheme of 1971-72 for a sweeping reorganization of the executive branch impressed many on Capitol Hill as being a little too ambitious, slightly authoritarian in tendency, and otherwise too ponderous to assess for possible beneficial effects. Then, by 1973, Congress had become sufficiently alienated by the Nixon administration to allow the President's reorganization authority, in existence since 1939, to expire.

All of this has apparently faded from memory, and now reorganization is once again in vogue. While the Ford administration has urged a renewal of Presidential authority to effect reorganization plans, the legislators have been considering an alteration of the regulatory framework, as well as "sunset" legislation (see "How to Ride Herd on the Budget" by Richard C. Leone, *The Nation*, May 22), which would require Congress to make periodic reviews of executive branch programs with a view to their possible termination, substantive alteration, and/or administrative relocation (which could mean the demise of an agency).

Of late, Governor Carter has been adamantly informing

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the electorate that a vote for his candidacy is a vote to change the structure of the government. Recently he revealed a plan to create an energy department. The motives underlying all of these reorganization efforts vary considerably, but can be generally attributed to the wish to promote efficiency and economy in government as well as to improve the Chief Executive's capacity to manage.

But before the Hoover commissions are resurrected, it should be recognized that government reorganization can no longer be regarded in terms merely of consolidation for efficiency and economy. Only a few months ago Congress adopted, and the President signed, the Government in the Sunshine Act, declaring it "to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decision-making process of the Federal Government." In brief, the Sunshine law presumes a policy of public observation of the meetings of collegial government bodies (those run by a committee, as opposed to others headed by a Secretary or similar top executive) "where such deliberations determine or result in the joint conduct or disposition of official agency business. . . ." This statute constitutes the latest manifestation of the so-called "people's right to know," recognized a decade ago in the Freedom of Information Act. However, to the extent that executive branch collegial units, to which the Sunshine statute exclusively applies, are abolished and their functions are

transferred to single-executive departments and agencies, the "people's right to know" is undercut.

Rooted in the Constitution's First Amendment guarantee of the right of petition, which traces its origins to Magna Carta, the "people's right to know" is a basic tenet of the concept of popular sovereignty and the American tradition of democratic rule. Reflecting the view of John Locke, whose ideas were quite familiar to the Founding Fathers, individuals contract with one another to conduct social affairs and to establish a governing institution to protect pre-societal or "natural" rights as well as to facilitate social intercourse. Implied in this view is the right to withdraw from the contract when the government does not fulfill its responsibilities.

Because the people "consent" to, but do not "submit" to, their government's exercising certain powers, such consent or support can be withdrawn when government assumes nondelegated responsibilities, abuses its authority, or corrupts itself in the exercise of power. In order to judge the propriety of state actions, the citizenry must have, at their own volition, information about the activities and operations of the government. In brief, eternal vigilance is the price of liberty.

Later, with the ratification of the Constitution, the concept of an informed citizenry was enhanced further by First Amendment guarantees of freedom to discuss public business (a privilege previously reserved for members of the legislature), freedom of the press, and freedom "to petition the Government for a redress of grievances" (which could include presentations against government secrecy). If the people are meaningfully to discuss public business, and if the press is to be free to report without state interference, both should have direct access to government information at their own request.

Unfortunately, the "people's right to know" was thwarted during our 200-year history. Until 1967, public access to documents held by the national executive was governed by a "need to know" policy, deriving from the housekeeping statute of 1789 that authorized the heads of government agencies to regulate the custody, use and preservation of the records and papers of their institution; and from a provision of the Administrative Procedure Act of 1946 indicating that matters of official record should be made available to the public, but adding that an agency could restrict access to its documents "for good cause found" or "in the public interest." In 1967, this policy was overturned. Adopted in 1966 and effective the following year, the Freedom of Information Act reversed the "need to know" position and presumes that executive branch records are available to the public, regardless of citizenry, unless a particular document qualifies for exemption under the precise terms of the FOI statute. However, even then, the nine exemptions of the law are to be permissively applied; every effort is to be made to facilitate disclosure. Thus, the Freedom of Information Act became the first embodiment of the unwritten "right to know."

Of late, the FOI Act has acquired a few kinsmen: the Fair Credit Reporting Act of 1970 grants individuals access to information held by reporting agencies and persons (including corporations) who regularly procure or cause investigative reports to be prepared on a consumer's eligibility for credit, insurance, employment, rent, license or government benefit; the Family Education Rights and Privacy Act (popularly called the Buckley Amendment) provides adults with access to records about themselves that are maintained by an educational agency or institution receiving federal educational funds; the Federal



"Mid-Air Near Misses? Nonsense! I've Been Flying This Ol' Thing for Years and Never Had a Near Miss Yet!"

The Washington Star

Advisory Committee Act of 1972 opens the deliberations of executive branch advisory bodies to public observation and requires that certain records be kept regarding their proceedings; the Privacy Act of 1974 grants a citizen access to those federal records held by executive branch authorities, including any personnel records that are retrievable by a personal identifier such as a name or a number (such access is restricted to those records pertaining to the particular individual making the request), and the recently enacted Government in the Sunshine Act opens the deliberations of collegially headed executive branch agencies to public scrutiny when a final policy decision is under consideration.

In a profound sense, attempts to reorganize the executive branch threaten the "people's right to know." Laws guaranteeing public access to documents, such as the FOI Act, remain unaffected by alterations of the executive structure. However, it must be remembered that government records constitute a secondary source of information for the public. Reflecting what has already transpired, they are of less importance than direct observation of public policy decision making. As the functions of multi-member agencies are reorganized into the jurisdictions of single-headed institutions, Sunshine will be eclipsed.

During the 94th Congress, large-scale inquiries into regulatory reform were underway in both the House and the Senate. Those proceedings will continue in the next Congress and may well result in the elimination or functional diminution of this class of government agencies, which are largely collegial. (While there are differing definitions of what constitutes a regulatory agency, the following are generally recognized as being such: Federal Reserve System, Civil Aeronautics Board, Consumer Product Safety Commission, Federal Communications Commission, Federal Home Loan Bank Board, Federal Maritime Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, National Labor Relations Board, Nuclear Regulatory Commission, and Securities and Exchange Commission.)

A proposal has already been made in the Senate to abolish the ICC. What might replace these entities would be modeled after such agencies as the Food and Drug Administration, the Environmental Protection Agency, or the proposed Consumer Protection Agency, with single-administrator leadership.

In September, Governor Carter proposed the creation of an energy department which would reportedly absorb the multi-member Federal Power Commission but not the collegial Nuclear Regulatory Commission. The extent to which Sunshine policy would prevail in the new arrangements for carrying out the FPC's present functions is not apparent. By a very rough estimate, it would appear that Governor Carter's 1971 reorganization plan in Georgia consolidated sixty-five budgeted agencies, a little more than half of which were collegial entities, into twenty budgeted agencies, a little more than half a dozen of which are collegial. The curtailment of Sunshine policy was not at issue in that reorganization but the implication for the current federal arrangement should be clear. And Carter is not unaware of the "people's right to know." In 1972, he signed Georgia's comprehensive Sunshine statute into law, opening sessions of the legislature and its committees, the policy meetings of state agencies, and the operations of county and local government to public scrutiny.

If the "people's right to know," as realized through the Sunshine Act, must, in the name of efficiency and economy, be diminished through the reorganization of multi-member agencies into single-headed entities, then it is incumbent upon the reformers to make every effort to extend coverage of the open-meetings law to more executive branch structures. There is nothing *sui generis* holy about collegial bodies of government; the problem lies with existing law and the concept of "meetings." The sole head of an agency may decide policy without resorting to a "meeting." The Sunshine Act is helpless to reach that type of activity. Until such time as it can be effectively amended to encompass agencies of more diverse structure than collegial entities, care must be taken to balance reorganization efforts with the "people's right to know." □

HAITIAN PEONS & DOMINICAN SUGAR

BORDER STRIFE IN HISPANIOLA

RAYMOND ALCIDE JOSEPH

A major social upheaval is underway on the Caribbean island of Hispaniola. For the past month or so, the army of the Dominican Republic has been rounding up thousands of Haitian "illegals" each week and dumping them across the border into Haiti. In one week last month, the Dominican Government acknowledges, about 3,000 Haitians, including children, women and old people, were deported to Haiti. And the campaign shows every sign of going on unabated for some time. For, although there are no accurate statistics on the number of Haitians in

the Republic next door, Dominican officials estimate the range to lie between 300,000 and 500,000. That means from 6 to 10 per cent of the population, which is put at some 4.8 million.

The Dominicans are determined to stop, by whatever means, this "peaceful invasion" of their territory, so called

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to distinguish it from the 19th-century Haitian military invasion of what was to become the Dominican Republic. The Dominicans won their independence in 1844, after about twenty years under the colonial rule of the Haitians, who were overthrown in a bloody uprising. Since then, Dominican nationalism has been based mostly on anti-Haitian feelings.

Haiti, with a population estimated at about 6 million, occupies the mostly arid and 80 per cent mountainous third of the island, and the idea of *Lebensraum*—because there isn't enough room for all those unemployed Haitians in their own country—haunts the Dominicans, whose sugar-based economy has provided their nation with a far better standard of living than the Haitians can hope to attain. Francisco del Rosario Diaz, a university professor and member of the Dominican National Border Council, at the weekly meeting of that regulatory board on October 14, urged his colleagues "not to forget the lesson of Hitler's Germany" in regard to Austria and Czechoslovakia. There were more Germans than nationals in those two countries, he said, and that led to German occupation. His statement was inaccurate, but the implication was clear.

Professor del Rosario Diaz affirmed that "with the illegal immigration we have gotten the negative capital of their [Haitians'] own miseries [such ills as] tuberculosis, malaria, worms, syphilis, yaws." He added that Haitians commit all sorts of crimes, including "thievery, violation of immigration laws, homicides, (black-)magic-inspired crimes, lewdness, profanation of corpses, bearing arms [illegally], cutting down the trees of our forests. . . ." In a word, all the sins under heaven. A week after this vitriolic speech, the army was on the march against Haitians.

The campaign has a racist tinge. Dominicans, who fancy themselves a "white nation," contend that the Haitians are "blackening" their people as Haitian men increasingly father the offspring of light-skinned Dominican women. Carlos Cornielle, president of the National Border Council, reflected this feeling during a press conference on November 3. Answering his critics in Santo Domingo, the capital, he said: "There are many Dominicans who are indifferent about the social ills that the Haitian immigration spawns. In part this is due to the fact that many Dominicans have children with Haitians."

Professor del Rosario Diaz, who appears to be the theoretician of the new anti-Haitian campaign, has produced a slogan: "The supreme national interest." To protect that course, he suggested the most urgent step to be taken: "We should immediately . . . carry out a census of Haitians residing illegally here, basing our identification procedures on human, racial and linguistic characteristics." With about 30 per cent of the population being of African stock and another 50 per cent of mixed ancestry, this sort of campaign could lead to a situation resembling South African apartheid. For the moment, however, all blacks working in Dominican fields are taking the simple language test of *pero*, *perro*, *perejil* (but, dog, parsley) and other such words which require some tongue rolling, a difficult task for Haitians who pronounce a non-rolling, and at times guttural, "r."

The crux of the matter is sugar, an industry that accounts for approximately two-thirds of the Dominican Republic's foreign exchange. It is largely built on the backs of Haitian laborers. Dominican officials estimate that 60 per cent—some say even 80 per cent—of sugar cane cutters in their country are Haitians. Cutting cane is a matter of survival for the Haitian peasant. While per capita income is said to be just above \$100 in Haiti, the actual earnings of the peasant, who lives mostly outside the money economy, is less than half of that. Even the approximately 30,000 Haitians who are lucky enough to find employment in light industry do less well than the cane cutters in the Republic. The minimum wage in Haiti is officially \$1.30 a day. In the Dominican Republic, at 40¢ an hour minimum, it is \$3.20 for an eight-hour day. But a sugar cane cutter, considered a field hand, gets only \$2.50 a day and grosses about \$435 for the seven-month season that begins around December. Of that amount it's estimated that he manages to save between \$150 and \$200 to take home with him.

The trek of Haitians to Dominican sugar cane fields has been institutionalized since the 1920s when American Marines occupied both nations. But in 1937 a shocking disruption occurred. After an anti-Haitian campaign, with complaints similar to those being heard now, Dictator Rafael Leonidas Trujillo ordered the massacre of between 20,000 and 30,000 Haitians who were declared "squatters" on Dominican soil. Then, before five years had passed, a "friend" of Trujillo, Elie Lescot, became President of Haiti, and the differences between the two countries were patched up. But relations remained cool until Dr. François "Papa Doc" Duvalier became President in 1957. He was heard to say that Trujillo was a "great patriot . . . who had done a lot of good for his people." Apparently that was a warming-up exercise that led to a work contract which was cooked up between Papa Doc and President Joaquin Balaguer in 1966.

The contract was never published, but some of its provisions are known. It called for Haiti to supply the Dominican Republic each year with 12,000 to 15,000 laborers. The Dominicans would pay a per capita fee of \$10 to the Haitian Government, i.e., to the Duvalier family. Also, 5 per cent of the salary of each worker would go to the Haitian Government, and an undetermined percentage would be deducted from each laborer's pay and sent home for safekeeping. The reasoning was that, with money awaiting them in their own country, the workers wouldn't choose to remain illegally in the Dominican Republic when their contracts expired. But many have apparently chosen to stay and the Haitian authorities are the wealthier for it. At the same time, those who stick it out eventually escape from the withholdings, and their new bosses also don't pay any initial fee. Some observers say that's why many Haitians have been encouraged to stay over for the following harvest. Thus, they become permanent residents.

Some people foresaw this outcome. When the 1966 agreement was reached between Messrs. Balaguer and Duvalier, Haitian nationalists and the AFL-CIO attacked it as "exploitative." They also pointed out that Mr. Balaguer had mentioned the presence of about 300,000 Haitians in his country, who should be recruited for the

fields. But after they have been living in the Dominican Republic for some time many Haitians become like the Dominicans and demand better wages and working conditions. Failing to get what they want, most of them go into pursuits other than cutting sugar cane—coffee harvesting, selling the national lottery tickets and furnishing Dominican prostitutes for the brothels of Carrefour, a red-light district in Haiti's capital of Port-au-Prince.

It's no coincidence that at this time of heightened anti-Haitian sentiments the prostitute question has arisen in Santo Domingo. About a month ago, it was reported that a Dominican woman allegedly had been murdered by the owner of a Port-au-Prince bar. Another prostitute who managed to escape back to her country denounced a brothel keeper for having flung a pregnant Dominican woman from a third-floor whorehouse. The Dominican press reports that this man is a well-known supplier of "warm flesh" who is often seen in the Dominican Republic. Observers say that such a man couldn't operate without official protection on both sides of the border.

The prostitution issue, however, is peripheral. What's basic is the nature and the conditions of the work Haitians do for the Dominicans. Cane cutting is a backbreaking job that pays very little, which explains why Dominicans shun it. Also workers are housed in unhygienic work camps, with all the exploitation that goes with such company towns. Educational facilities, including playgrounds for children of workers, are either rudimentary or nonexistent.

That situation may change, but not for Haitians. The Dominican Government has begun an \$8 million housing program intended to attract Dominican workers. Also a strong emphasis is being put on schooling and sports activities for children of cane-cutting families. According to the authorities, these improvements and more attractive wages will eventually draw Dominicans to the sugar cane fields. But David Rodriguez, executive director of the State Sugar Council in Santo Domingo, isn't so sure. "Although I am for the Dominicanization of sugar-cane cutting," he said recently, "I wouldn't want to see the Haitians returned to their country while the possibility exists that we'll have to send for them again."

What has brought the Haitian question to a head is the fall of sugar prices on the world market. From its peak of 65.5¢ the raw pound in November 1974, the price has fallen below 10¢, which is below production cost in the Dominican Republic and in most other sugar-producing lands. Moreover, in September President Ford tripled the tariff on sugar imports to 1.875¢ a pound. This prompted loud protests from Dominican officials and American heads of firms operating in the Republic. Carl D. Gustavson, president of the American Chamber of Commerce of the Dominican Republic in Santo Domingo, states that each 1¢-a-pound increase in the tariff costs the Dominican Republic about \$23 million a year. He asked Mr. Ford for "special considerations" for this "friend" of the United States. What especially disturbs Americans is the tone of the speeches of Dominican officials. In an address to the U.N. General Assembly, Dominican Foreign Minister Emilio Jimenez Jr., asserted that the sugar crisis is one of "economic totalitarianism which is bound to disturb the international order." He

urged that producing and consuming countries reach "a new commercial order to forestall the ruin" of the sugar producers. Meanwhile, the Santo Domingo officials have threatened to curtail foreign investment on the island and to raise taxes on businesses operating there.

One company that has a lot to lose but which has remained quiet is Gulf & Western Industries, Inc., which accounts for about 20 per cent of the Dominican sugar production. The New York-based conglomerate is also involved in cattle raising, citrus plantations and the tourist trade. G & W, which employs many Haitians in its La Romana operations, claims that its workers are legal residents who have been in the country for many years. Yet press reports mention the deportation from La Romana of Haitians who have lived more than twelve years in the Dominican Republic, and who have had children there, many of them offspring of Dominican-Haitian unions.

With sugar profits being squeezed, it is obviously in the Dominican Republic's interest to have the crop harvested by native, rather than by Haitian, labor. Hence the deportation campaign, which the Dominican officials have been explaining in terms designed to prevent allusions to the massacre of 1937. In a television address, reported in *Listin Diario* (March 22), National Border Council President Cornielle asserted that Dominicans "are not only victims of unemployment" because of the "invasion of the national territory by Haitians but are also candidates for contamination of a host of diseases transmitted by the Haitians." Moreover, Mr. Cornielle denounced the practice whereby "thousands of Haitians fraudulently obtain Dominican citizenship" by paying \$500 to certain Dominican officials. This transaction is based on a late declaration of birth to obtain a birth certificate with a Dominican name. Since many people in rural areas don't register births or deaths at the time of occurrence, and no law stipulates that such formalities cannot be attended to later, many Haitians apparently have been using the loophole. Mr. Cornielle has suggested that the law be changed.

But while the Dominican official was fulminating against the Haitians, Ramon Antonio Veras, a well-known columnist for *El Nacional de Ahora*, was denouncing the scandalous sale of Haitian workers. In the May 17th issue of this daily, he said that in the Barahona region of the country, Haitians are first declared "illegal," then threatened with deportation. Whereupon the frightened "illegals" are ready to do anything to escape being sent back to Duvalier-land, and the bargaining begins. "In general," Antonio Veras continued, "the sale price of a Haitian is \$50"; for those who came under contract and failed to return to Haiti, the going price is \$75.

He explained that "the person who buys a Haitian has the right to take him to his farm and put him to work without pay; he need only furnish the slave with basic needs, that is, take care of him so that he can cut sugar cane." Antonio Veras went on: "[The master] has the right to kick him and even kill him if the subject refuses to cut cane. . . . It's unbelievable that in the 20th century human beings are still being sold. . . . The Haitians suffer both in their country and in ours."

The suffering of Haitians doesn't seem to upset their

own government. In fact, the Haitian Government appears to be playing a role in the deportation. On October 26, Enrique Valdez Vidaurre, director of Immigration in Santo Domingo, declared that the deportation of Haitians had been "coordinated with" the Haitian Embassy in the Dominican capital. Moreover, he added, the Haitian mission in Santo Domingo "has, on more than one occasion, collaborated" with Dominican authorities by turning over some illegal Haitians to be shipped home. As if to reinforce the point, that same day the Dominican press published the smiling photograph of Haitian Ambassador François Guillaume with army chief Gen. René Beau-champs at Dominican army headquarters.

Meanwhile, the government-controlled Haitian press has practically ignored the mass deportations. Although refraining from any commentary, two Port-au-Prince dailies dared to run a short Agence France Presse dispatch concerning the plight of the Haitians. Whereupon on November 8, the semi-official *Le Nouveau Monde*, which hadn't said a word about the affair, stated: "Our knowledge of history puts us . . . always on guard against those dispatches that have never meant any good either for the Haitian or the Dominican people." In a pointed rebuke, government-named Managing Editor Ulrick Saint Louis pontificated: "We have full confidence in the enlightened patriotism, in the precocious lucidity [*sic*] and in the great political vision of the young leader of the nation . . . who has taken hold of the problem to bring about a solution . . . in the defense of the material and moral interests of the Haitian nation."

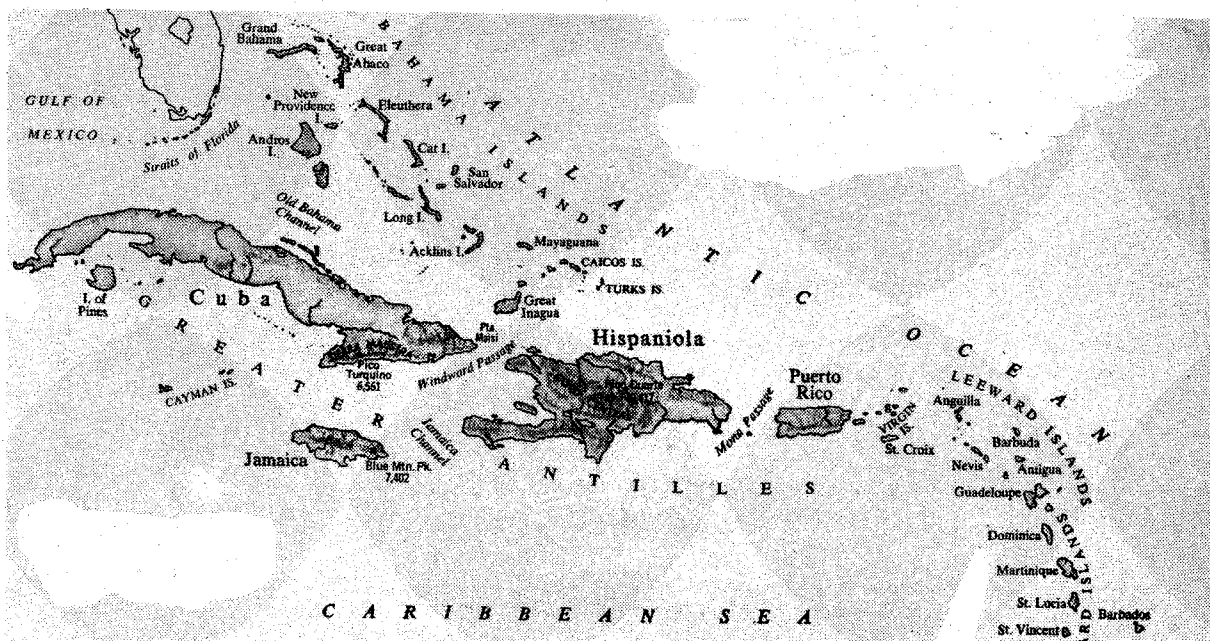
Nonetheless, the 25-year-old self-styled President for life Jean-Claude ("Baby-Doc") Duvalier hasn't even put a cattle truck at the disposal of the new refugees, who often must walk up to 100 miles to their villages. Indeed, the Dominicans could be said to have acted more humanely toward the Haitians, who are usually packed in Dominican army trucks under the glare of soldiers toting bayoneted automatic rifles.

It has been suggested that the Haitian authorities have

kept silent on the deportations because they don't want to jeopardize this year's contract. Recruitment of workers has fallen to about half of the 11,000 of last year, but it is expected that at least those 5,500 will begin leaving Haiti for the Dominican fields around December 1. Thus, the Haitian authorities will have pin money for Christmas.

The prominence of the Dominican army in the Haitian question may come back to haunt the economically beleaguered Balaguer regime. Sugar prospects are poor for the next two years. And although the stocks of coffee, cacao and gold—other mainstays of the economy—are on the rise, they won't offset the disastrous fall of sugar. These are ominous signs for President Balaguer who has cashed in politically on the economic boom that followed the 1965 invasion of the Dominican Republic by the United States, which managed to convert the intervention into an Organization of American States action. Since the Dominican army is proving efficient in dealing with the intractable problem of the "peaceful" Haitian invasion, it might later on attempt a quick solution of the country's economic downturn. One can imagine a scene in which the army would be prodding reluctant Dominican peasants to "volunteer" for cane cutting "brigades" to replace the Haitians.

A portent of the times is the possible return from exile in Panama of ex-Dominican army Gen. Elias Wessin y Wessin. A "joint group" from various political parties and organizations in Santo Domingo said it would travel to Panama to discuss with the General the possibility of his participation in the May 1978 Presidential elections, to deny Balaguer a fourth four-year term. Wessin y Wessin, pro-American during the 1965 events in his country, was banned from the Republic in 1971, after Balaguer denounced a plot against his government said to have been headed by the General. While in such cases, plotters are often jailed if not shot, a military junta decided against such drastic measures and allowed their comrade in arms to leave the country. It's believed that the return of this military leader, who has a following both in the army and in the civilian population, may be what's



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needed to bridge the gap in another explosive situation.

The threat of army solutions keeps building. A front-page headline in the authoritative *El Caribe* (November 9) said: "Haitian Airplanes Violate Dominican Airspace." The article said that "Haiti's war planes have violated Dominican airspace on various occasions in the past months," adding that the Dominican Foreign Office "formally protested" these "violations," and that "sources indicated that the government of Dictator Baby Doc Duvalier replied in a 'haughty' manner."

El Caribe charged that the Haitians have begun an armaments race, with Baby Doc's private army receiving new automatic weapons and the air force getting ten French-built jet warplanes. A U.S. State Department official says Haiti has no jets, military or civilian, but adds that whether or not the Haitians are discussing planes with the French is another matter.

Obviously *El Caribe* is warning of a possible war between the two countries. Few observers see it as a near possibility. However, it can be said that if the Dominican Republic continues to advance as it has in the recent past, and if Haiti continues to be mismanaged by the Duvalier family, the Dominicans will have to fire on many a Haitian trying to cross the border into prosperity. Therein lies the fuse of a mini-war.

No doubt the OAS could deal with it. Yet the United States is always quick to react to crises on Hispaniola, and Cuba is only 50 miles away. Further, Spain and France have recently shown renewed interest in their former colonies, with King Juan Carlos making two visits to Santo Domingo in three months and the French inaugurating a \$7 million "friendship highway" in Haiti. A mini-war could attract dangerous support on either side. □

BILL OF RIGHTS OR BILL OF GOODS?

FREE SPEECH IN THE WORK PLACE

JOEL SELIGMAN

In no respect does the U.S. Constitution fall so far short of its intentions as in the failure of the Bill of Rights to protect corporate employees in the work place. Those first ten Amendments were meant to be an enduring expression of the inviolable rights of American citizens—rights which Tom Paine sweepingly called "The Rights of Man." But because of the simpler character of American society, these liberties were phrased as rights to be defended against the federal government. In 1791, perhaps, only the King or a central government seemed likely to behave tyrannically; but the phrasing is tragically limited in 1976, when a majority of Americans work for corporations. It makes no meaningful difference to those who lose their "inalienable" rights to freedom of speech or due process of law that they were victimized by a giant corporation rather than by a giant government. In either case, the purpose of the Constitution has been frustrated and the Bill of Rights reduced to a bill of goods.

In justice, the corporation should be subject to the same fundamental restraints that the Constitution places upon state and federal government, including the right of the corporation's citizens, its employees, to participate in the governance of their work place. But how to structure workers' participation into giant corporations is far from obvious. According to Mack Hanan and Isidore Silver in a path-breaking 1967 *Harvard Business Review* article, the key is to establish an internal corporate ombudsman with the authority to intervene on behalf of employees and to dramatize and publicize *outside the corporation* complaints that do not receive proper management attention.

Other advocates of "job power" would go so far as to adopt Yugoslavia's "workers' councils," which possess extensive managerial powers. Or they would at least

generalize from the experiments of such corporations as Norway's Norsk Hydro or U.S. firms like Corning Glass, Motorola and Pet Foods, which have given their employees wide-ranging powers to redesign their work places. But short of complete "industrial democracy," Congress can act immediately in obvious areas of constitutional rights.

Except within the ambit of National Labor Relations law, no present federal law assures that citizens will be as free to express themselves in the work place as they are in the body politic. Yet the Supreme Court has made clear that

[W]hen we balance the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion . . . we remain mindful of the fact that the latter occupy a preferred position. . . . [T]he right to exercise the liberties safeguarded by the First Amendment lies at the foundation of free government by free man.

Occasional protection of a union's right to free speech is not enough. It does not reach to the numerous cases of employees who are fired or otherwise penalized for participating in political activity—on or off the job—for writing or publishing articles critical of management, or expressing opinions unpopular with management. At several corporations, public discussion of job safety, employee privacy, or race and sex discrimination takes place in anonymous underground newspapers like *The Stranded Oiler*, the *A.T.&T. Express* or the *Met-Lifer*.

Retaliation falls most frequently on employees who "blow the whistle." A conscientious employee risks los-

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ing his or her job for reporting practices such as the marketing of defective vehicles, the waste of government funds by private contractors, the industrial dumping of mercury in waterways, a company's resort to bribery or illegal campaign contributions, or the suppression of data on serious occupational disease. What Montesquieu called the basis of all political freedom—the assurance that you can do what you ought to do, and that you will not be forced to do what you ought not to do—has failed for the product testers and junior executives of our largest corporations. Men and women who should be praised as public citizens have been intimidated and ostracized.

¶Men and women like George Geary. A sales executive for United States Steel, Geary objected to the marketing of a new type of pipe which he believed was inadequately tested and likely to fail under high pressure. He was fired for insubordination, even though U.S. Steel considered Geary's charges so serious that they withdrew the product for major retesting.

¶Or like Henry Durham, who was demoted for protesting against Lockheed's waste-ridden supply practices on the C-5A transport plane and was later forced out of Lockheed after testifying before Sen. William Proxmire's Subcommittee on Economy in Government.

¶Or Colt Firearms' workers Wayne Henfield and Vic Martinez, who were suspended and threatened with being "blackballed" if they publicized the defects of the M-16 rifle.

¶Or G.M. engineers Carl Thelin and George Caramanna, who were pressured not to reveal the structural defects of the Corvair.

¶Or Carl Houston, an engineer for Stone and Webster Engineering Company, who was fired for voicing criticism of the pipe welding of an atomic power plant, where a defect could have led to a catastrophic melt-down.

¶Or data analysts Kermit Vandiver and Serle Lawson, who were coerced by B.F. Goodrich executives to falsify laboratory test results on an aircraft brake for an Air Force-contracted plane, and later forced to quit when they "went public" with the deception.

In each of these instances employees were punished for trying to protect the public. Yet under the present state laws of agency, they may themselves have violated their "duty of confidentiality." Section 395 of the Restatement of Agency, promulgated by the American Law Institute, currently advises that an agent (or employee) should not communicate information confidentially given to him by his principal (his corporation) when it will injure the principal. Comment *f* of this section recognizes an exception when the principal is committing or is about to commit a crime—but even that does not win back the employee's job; it merely serves to deter a corporation from suing the employee. State law does not recognize an employee's right to damages for "malicious discharge" if the employee refuses to participate in immoral or tortious activity or declines to compromise professional ethics. As a General Electric official explained after three G.E. engineers quit to publicize the dangers of existing nuclear plants, corporate employees must "be willing to resign" if they exercise their First Amendment rights within a firm.

Under the First, Fourth, Fifth and Ninth Amendments,

the state may not invade certain rights of individual privacy. These amendments create "zones of privacy" which government officials may penetrate only under extraordinary circumstances—such as threats to national security or "probable cause" of the commission of a crime. Otherwise they may not penetrate at all.

No such niceties apply at the work place. Eighty per cent or more of the largest U.S. corporations subject the applicant to a battery of personal and psychological interviews and tests. As a condition of employment, the job applicant must respond to questions, unrelated to the job, about such matters as his or her reading or travel habits, nonwork interests, religious faith, relationship with parents, marital difficulties, homosexuality, sexual fidelity, political views, "loyalty," and what Sears Roebuck once quaintly referred to as "values."

To keep "bad apples out of the barrel," many corporations go much further. Former FBI agents or organizations such as Fidelifacts or Bishop's Service are hired to learn whatever they can about an applicant by talking with neighbors, former employers and co-workers. Not only do PEIs (pre-employment investigators) interview outsiders about the future employee's health, records at previous jobs, debts, drinking problems, drug addiction, sex deviancy, or possible criminal violations, but many search firms and management consultants feel it is also imperative that someone—either from the company or retained by the company—get into the man's home for a look around. Such a home interview may establish evidence of unhappy marriage or neglect of children, whether the applicant's spouse is domineering or otherwise a "problem."

Polygraph (lie detector) examinations take up where regular investigative methods leave off. A 1974 study prepared by the Senate Subcommittee on Constitutional Rights estimated that between 200,000 and 300,000 private business polygraph tests are administered each year. The study indicated the figure may be as high as 500,000. John E. Reid and Associates, Pinkerton National Detective Agency, William J. Burns International Detective Agency, and Dale Systems, Inc. are some of the firms that administer tests for national corporations. The lie detector is supposedly proficient at uncovering "latent tendencies toward dishonesty" among job seekers; whether or not the applicant intends to stay with the corporation "permanently"; "dangerous habits" such as alcohol, gambling, girl friends on the side, or homosexual "tendencies."

On the job, surveillance may become even more intensive. In 1966, the American Broadcasting Company estimated that one out of every five businesses in the country eavesdrops on its workers, using such techniques as hidden cameras, hidden microphones, one-way mirrors and peepholes. Today, many firms would consider such techniques primitive. In the largest corporations, computer data banks frequently include "personal dossiers" containing information on an employee's education, military record, medical history, employment background, aptitude and psychological testing performance, as well as subjective appraisals of his character and skills. A

corporation may integrate pre-employment "loyalty" or polygraph checks, conviction and credit records, as well as anonymous or unattributed complaints. Since no safeguards assure "contextual accuracy" and computer dossiers are freely disseminated, the individual's ability to maintain control over personal information has disappeared.

Wiretapping, hidden television cameras, spike and parabolic microphones, remote sensing devices and infrared photography have become less expensive and more effective. For as little as \$5 to \$10 microphones can be installed in P.A. speakers already operative in washrooms, loading docks, lounges or offices. Phone-listening devices which audit all conversations within a room cost little more. Even quite sophisticated equipment such as long distance "snooper" antennae or bugs that "broadcast" detected conversations to distant receivers are well within reach of the security-conscious corporation.

The corporate employment of "outside specialists" to deploy the new sophisticated electronic devices has increased. The giant detective agencies, Pinkerton's, William J. Burns, Wackenhut, and Norman Jaspas Associates, are increasingly hired for "undercover" assignments. Not only rival businesses and unions but also a firm's own executives are surreptitiously observed to assure that they are not leaking corporate secrets or otherwise being disloyal.

All this is far astray from the free society the Bill of Rights sought to promote. Gen. Robert E. Wood, former chairman of the board of Sears Roebuck, has summed it up: "We complain about government and business, we stress the advantages of the free enterprise system, we complain about the totalitarian state, but in our individual organizations . . . we have created more or less of a totalitarian system in industry, particularly in large industry." Yet present statutory law provides virtually no protection to corporate employees.

The burden should therefore be placed squarely on the giant corporation to justify any act which contravenes basic constitutional rights. Congress could do that by enacting an "Employee Bill of Rights," extending selected constitutional guarantees to the work place. As Ralph Nader, Mark Green and I recommended in *Taming the Giant Corporation*, Congress could require of a business, to the same extent that the Constitution requires of the federal government, that it observe the First Amendment requirements of freedom of religion, freedom of speech, freedom of the press and peaceable assembly; and that it respect the rights of privacy of their employees and all other United States citizens.

To elaborate, the First Amendment rights of "whistle blowers" should be defined to prohibit retaliation against any employee who in good faith communicates to the board of directors, the United States Congress, state legislatures, local governments, or the press information concerning corporate violations of state or federal law; information which would tend to impeach the testimony of corporate representatives before state or federal courts, agencies or legislatures; information concerning inaccurate public statements by the corporation; or information concerning unethical conduct by the corporation or any of its employees.

The rights of employees to privacy should prohibit specific types of pre-employment testing and on-the-job surveillance, such as the use of mandatory polygraph tests and the gathering of confidential credit information. Pre-employment tests would be permitted only to the extent that the employer can demonstrate a functional relation to the job under consideration. The use of hidden microphones or television cameras would be proscribed. Further, such a new Congressional enactment should allow employees the right to examine their corporate personal files. This proposal is similar to recent federal laws which enable students and citizens to inspect their personal files at universities and federal agencies (including the FBI and CIA) to determine whether the collected information is accurate. Some corporations, including IBM, have already recognized the propriety of this right.

Finally, a new law could give teeth to these substantive rights by creating a new federal cause of action. Under present state law, a corporation may dismiss an employee or sever an economic relationship at will. The tenor of state law was succinctly described by a Tennessee court in 1884: All employers "may dismiss their employees for good cause, for no cause, or even for cause morally wrong, without being guilty of legal wrong." An Employee Bill of Rights would reverse this rule when the corporation fires, penalizes, or intimidates an individual in violation of his constitutional rights to freedom of expression or privacy. In such cases, the injured person could seek money damages from either the corporation or the corporate executives or employees involved; and if the injured person were an employee or dealer of the corporation, he or she may also seek job protection. The federal courts would be given power to enjoin the corporation from dismissing or penalizing an employee or dealer during the litigation process. The courts would also have the powers to award the injured person attorneys' fees and costs and to transfer or dismiss corporate executives or employees who willfully violate these constitutional rights.

Such a remedy would expand an already existent federal policy of protecting employees from "unjust dismissals." For example, the 1964 Civil Rights Act forbids employers from discriminating against employees on account of race, color, sex, religion or national origin; the National Labor Relations Act authorizes union members to seek damages (in the form of back pay) and reinstatement if they are discharged because of their involvement in certain labor union activities. The National Labor Relations Act also enables unions to insert "just cause" provisions in their collective agreements to protect their members from discharges for ulterior purposes, for unstated reasons, or for reasons erroneously believed by the employer to be true.

By broadening the selective protection of these acts, an Employee Bill of Rights would fairly balance the corporation's power to make or sever economic relations against the constitutional rights of those affected by the operations of our largest corporations. This rule would effectively announce that accountability in the work place is an essential corollary of democracy in society and that corporate tyranny will not be the price of efficient production. □

BOOKS & THE ARTS

The Legend Maker: Billy the Kid

FREDERICK TURNER

In the late summer of 1947, on my way to becoming a little outlaw myself, I stole a paperback copy of Walter Noble Burns's *The Saga of Billy the Kid* from the drugstore at the corner of 107th Street and Hale in Chicago. In the alley just off the Rock Island Lines tracks I opened its brittle-backed pages—and was disappointed: there were no pictures, and I had wanted so much to see The Kid's face, his guns and horse. So shortly thereafter I put this apparently fraudulent work on the secret bookshelf in my closet where it reposed next to a salaciously titled book by Sigmund Freud which had disappointed for the same reason.

Three years later—again it was summer and thus a time for enjoyable reading—I took Burns's book out from its guilty obscurity and read that famous, flat first sentence, "John Chisum knew cows." Now, more than a quarter of a century later, I can still see that page, those words, and the shaded summer light that fell across my bed as I read the opening chapter. It was essentially factual in intent, and yet it was brightly painted enough to give the wary reader, easily bored by cowhide history, a hint and promise of gaudier colors ahead and of designs larger than history. Like John Chisum forking over a debt he owed The Kid, Burns delivered fully on his promissory note, and for the rest of that summer I was The Kid as Burns had made me so vividly see him, and in the process I came to realize how superfluous pictures can be to the text of a writer who knows how to paint with words.

Of course, there is much writing here that would naturally gratify and amaze the literary sensibilities of an adolescent boy—considerable stretches where the painting is "purple." And of course, subsequent acquaintance with the bibliography on Billy the Kid and on the Lincoln County War has made it clear that Burns both enlarged and simplified. Yet nothing I am aware of that has

been published in the intervening half century seems as intuitively true and right on these subjects. Michael Ondaatje's recent *The Collected Works of Billy the Kid* and Bob Dylan's compositions for the film, *Pat Garrett and Billy the Kid*, bear closest comparison, but both owe much to Burns and both seem to me lesser achievements.

Burns was hardly breaking new ground with his book in 1926. By that time the legends of the war and of its most famous participant had had more than forty years to gather life and force, and The Kid had been celebrated in dime novels and in more sober treatments by Garrett, Charles Siringo and Emerson Hough. But somehow in this book, as in none of his others, Burns divined an approach that was capable of rendering out an essential and fresh truth about The Kid and his times and lands. Through his talks with Lincoln County old-timers, traveling the hot roads between Roswell, Lincoln and Santa Fe, sitting through long, breezy afternoons on the galleries of ranch houses, evenings before greasewood fires of small adobes scattered along the green floor of the Bonito Valley, Burns heard something that had not reached the thresholds of his predecessors. And this was the authentic sound of folk legend. At the same time he came to feel a landscape. Together these things told him that what he was after—and what the others had sought—would never be found in primitive county records nor even in the memoirs of illustrious participants like Garrett or Lew Wallace. However briefly and for whatever immediate purposes, Burns learned that the inmost truth of the past is often to be found somewhere off the page. "That which is essential is invisible," says Voltaire, and perhaps never more so than when a writer would exhume an outlaw from the past. By definition such a figure would elude the documents of which official history must be composed. Just as by definition he would survive through the folk and on the breath of their retellings.

Beyond this the New Mexican landscape seems to have nodded ever so slightly to Burns, and that was all he needed to sense the shape of what he had entered into, seeking, maybe, only a subject for a book. For legend, like myth, is often deeply rooted in a particular landscape, and if the excesses of

this New Mexican landscape occasionally tempted the writer into excesses of his own, at the same time the land gave him that dramatic triangulation that is the life source of the book he was so right to call *Saga*: Youth, the inevitable destiny of Death, and the magnificent Land, as various as God, brooding over all.

Making a pilgrimage to these lands was for me both delight and revelation: delight to realize the truth of my earlier imaginative experience; revelation to discover how true that book had been in its own right. And for that revelation I had to actually traverse Kid country.

There are still stretches of it that must be just about as they were in Burns's time—or, for that matter, in Billy's. Especially approaching from the north. Between Encino and Duran there is nothing but the land itself, unimproved, unreclaimed, its long, undulating reaches a battle-tested brown with dots of green—junipers and bunch grass and several varieties of cactus. Where the land is barest dust devils send red cones upward for a moment. There is no water here in summer, and the dry washes look like veins that have split open in a huge anatomy. In the wind, hovering hawks glide close to the surface or allow themselves to be taken effortlessly upward, and to the unpracticed eye the tumbleweed in the distances also looks like birds—brown, dense, windborne.

At Duran the land begins to change and heading south into sunlight you raise the Jicarilla Mountains dead ahead, the nearest mostly in their own unique colors, the next range deep purple, and the farthest the best blue in a French palette. Where the Jicarillas become the Capitans there is a sign for White Oaks, and 9 miles deeper in you come upon the crumbling husk of a town which contains no kernel. If, as Burns wrote and Hough before him, the town was "cradled" by two mountain ranges, time demands a change in metaphor, for White Oaks has now slipped from sleep into the still longer silence of decay, the valley floor littered with the brown bones of adobes, some of them barely visible above the waving tops of grasses. And there where the mind's eye reconstructs the center of the town a tall, gaunt hulk keeps sentinel over nothing.

Frederick Turner teaches folklore and English at the University of Massachusetts and is author of the forthcoming The Cost of Living: Notes Toward the Reconstitution of American History (Godine). He is currently at work on a study of wilderness exploration, Beyond Geography (Viking Press).

LITTLE FROGS

*little frogs get into the house
they leave the cool earth and mint-green
shade of weed-garden to try their luck
on hot linoleum and tricky rug
picked-up they sit on the tip
of the middle-finger open-eyed
but blind pulsing life modestly
I put them back in the grass
and never see them again:
a dry flat skeletal frog
minted into its own medallion
of something like fame
on the same middle finger
nevertheless cries out too late
too late: a little frog
has only died a victim to error
a martyr to the one need:
pulsing summertime joyous disbelief
hoo boy zingo zowie wow and smile
for having arrived so quietly
with so much ready-made style.*

William Saroyan

Was it in front of this building that the long-limbed Garrett stood, reflectively picking his teeth after a good meal, his deputy, John Poe, beside him when the winded Mexican rider galloped in with the news that El Chivato had killed his two jailers and escaped? And where is the Dedrick brothers' livery stable where The Kid hid out before riding northeast to Fort Sumner and death? Without guides such as Burns had these ruins are like hieroglyphics.

The road out of White Oaks to Lincoln keeps company with the Capitans now, at the head of which is Capitan Peak. Burns described this as the only headstone of Morton and Baker, executed by The Kid and his posse at Agua Negra between Roswell and Lincoln. A farmer selling the cold cherry cider that is a staple of this fruitful little valley has never heard of Agua Negra, and so Morton and Baker, murderers themselves, still lie somewhere at the eastern foot of the peak, undiscovered, undiscoverable.

Lincoln is cradled by the Capitans on the north and the Capitan foothills on the south, these latter rising steeply from the back of town, and you think as you see how they overhang the single street how perfectly situated those snipers would have been during the three-day battle that marked the turning point in the war. Here then is that street with its big, lazy bend and at its western end the old Murphy/Dolan store, later the county courthouse, then a school and at last a museum. Its twin staircases are

gone now, leaving its front porch without access except from within, but you can still stand where The Kid stood at the porch's eastern edge and wonder at the homicidal rage, the bottomless revenge that filled him that sunny April day when he pumped the last chamber of Ollinger's shotgun into his already lifeless body, smashed the stock against the railing, and hurled the remains down at the corpse while the townspeople watched from the shadows of their homes and stores.

The lower floor of the building contains photos and documents relating to The Kid and the war in which he came to murderous prominence, and from a coffined glass case the face of The Kid's companion bravo, Tom O'Folliard, stares out, frozen in his youthfulness by the winking eye of the camera. Some itinerant photographer had invaded the pictureless, imageless West with his big, cumbersome box and plates, for here are the shadows of cowboys, Indians, settlers, most of whose names are now lost, detached from these faded impressions. And here too is Charlie Bowdre, dressed to kill with his cartridge belt, revolver and rifle, his handsome, fiery wife, Manuelita, beside him. And Fred Wayte. And Hendry Brown, who tried to go straight and couldn't. Dolan. Murphy. The McSweens. Poe and Pat Garrett.

And, of course, The Kid, the only authenticated photo revealing him narrow-shouldered, weak-jawed, slovenly in his bulky range clothes, posed in front of old Beaver Smith's saloon at Fort Sumner one dateless day, doubtless un-

der circumstances much like those that caught O'Folliard; and you wonder what that photographer thought, lining up his sights on this subject who seems distinguished only by his youth. Burns drew a far more flattering portrait of the hero than this photo can show, and Burton Rascoe was once moved by this discrepancy to comment that the real Kid bore all the outward appearances of a cretin. No matter, Burns had the weight of local support for his picture of the Kid as nice-looking with a clean, fair face, only mildly disfigured by buck teeth. Old Man Foor, Burns's guide to the graves at Fort Sumner, said these teeth made The Kid look like he was smiling when he wasn't—a fatal delusion.

In a far corner, as if in hiding from the stare of the photographed Kid, is a full-color portrait as tourists (perhaps guided obscurely by Burns) would have him, blue-eyed, apple-cheeked under a wide gray sombrero, looking like a cross between Tom Mix and Johnny Mack Brown. It is one of the few false touches.

Upstairs is the large courtroom, bright, high-ceilinged, in the northwest corner of which The Kid was confined. A faded outline in white along the wide-planked floors gives the original dimensions of the room that eventually gave way to expanded judicial needs, a single note of triumph here for law over outlawry. And here is Billy the Kid's window from which he gazed upon the tiny world of Lincoln. The pasture is there where Burns described it, and sparrows and robins still clamor among the bushes along its borders. Almost directly beneath the window lies the stone marker where Ollinger looked up into death.

There are two holes in the wall at the foot of the stairs leading down from the prison room. Legend and Burns its recorder tell us that these are the exit marks of those shots The Kid fired at Deputy Bell. Generations of school kids, trooping upstairs on sentences of their own when this was the schoolhouse, have greatly enlarged whatever was here so that now the holes might have been made by cannonballs. Just to the left of these stairs a door opens out onto the back pasture, and out of it Bell stumbled blindly into the spring sun, a mortal hole bored through him back to front.

Balancing the Murphy/Dolan store at the opposite end of town, the counterweight to the feud, is the Tunstall/McSween store, as big although not so high as its rival. Its shutters still carry their protective metal inserts between wooden slabs and within, the high, dim shelves still bear relics of the merchandise once dispensed to this farming and

ranching community, simple items answering fundamental needs: tack, rope, lamp chimneys, buckshot, grains, coffee, tea. The ledger books, neatly ruled and entried, show the outlays of plowline and lumber to the Oteros and Bacas and Salazars who planted and reaped along these green Bonito bottoms and who lie now in the stubble-spiked cemetery east of town, crosses and markers worn and tilted in a wind that moves the iron turnstile at the gate in an endless obituary that few will read.

The store's owners, both victims of the war, lie out behind it. When Burns was doing his collecting a half century ago Tunstall and McSween lay markerless beneath a smoldering pile of rubbish. There are two neat granite markers now, and the rubbish pile has been moved a few yards east. Burns says that the lawyer Chapman, murdered by Dolan, Jesse Evans and Bill Campbell, lies alongside Tunstall and McSween; if so, he still awaits his commemoration.

It is just possible that this quiet, shaded town is still divided along the old factional lines, the Tunstall/McSween followers tending to live eastward around that store, the Dolan/Murphy people to the west. And beyond this, and as if to reinforce the division, those around the eastern store seem partial to *The Saga of Billy the Kid* while those at the other end of town are more aware of the liberties the writer took with history. Such at least is suggested by talks I had with two remarkable women.

Rafaelita Pryor lives on the eastern edge in one of the neat adobes, shadowed and bird-sung, that line the street. She is the granddaughter of Saturnino Baca, founder of Lincoln County, and on the other side of her family she is a Salazar, the county's other great family name. Rafaelita's brother married Yginio Salazar's daughter, that same Yginio who, by playing dead for hours amidst the actual corpses, survived the flaming end of the three-day battle and lived on to become a major informant of Burns's. It's all in that book, Rafaelita tells me, and she goes on to say that she herself heard the story from Yginio years after he had talked with Burns. And like Yginio and Burns she thinks well of The Kid. "Yginio really liked him," she says. "Most people did. He was very nice to old people, poor people. But," and here she wags an admonitory finger, "you'd better not cross him." In illustration of which characterization she offers an anecdote about her uncle Bonifacio, witness

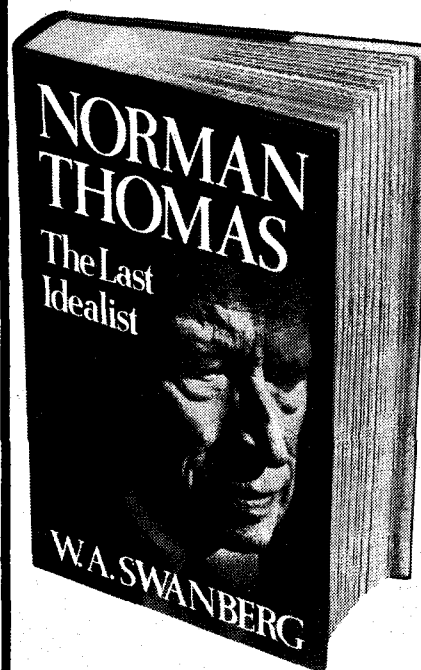
to the assassination of Sheriff Brady and his deputy by The Kid and his men who shot from the cover of the Tunstall/McSween store. Bonifacio was called to testify at The Kid's trial at Mesilla and did so. Some time after The Kid's escape from Lincoln, Bonifacio met The Kid on the road to San Patricio. "You know," said The Kid, "I'd kill you right here if you'd lied at my trial." Didn't make any difference to him which way the lie had gone. Just that it was a lie. *That's the kind of man The Kid was!*"

Out at the other edge of town a broken, one-story adobe lies amidst its grave of high grass, the green of the fields beyond showing through its naked roof beams. This was the home of Sheriff George W. (Dad) Peppin, successor to the murdered Brady, who was described unflatteringly by Burns as the willing tool of the Murphy/Dolan faction. Next to it is the tidy homestead of Peppin's granddaughter, Belle Wilson. A strong-framed woman even in her old age, large sunbonnet shading a direct, lined face, she answers my opening question about Burns's book: "Yes, I've read that book, and I don't mind telling you I don't think much of it." This is by way of an invitation, and she welcomes me in.

Not to misunderstand her, she wants to make clear a distinction: that book was very enjoyable, "but he has a good many things in there that didn't happen and couldn't have happened." The heart of the objection is historical: Burns took liberties with the truth, she says, and got most of his information from the Coe family, especially Frank Coe. And so naturally, his book would be biased. Both Coe brothers rode with the Tunstall/McSween forces and did their share of rustling and killing—"at least we know Frank did. The only comment I can remember my mother ever making about the Coes was that they weren't neighborly people. Just not the kind you'd want around you."

She wants to set me straight on John Chisum too, since Burns had so many good things to say about him. She tells me that around here, "we know that Chisum had as much to do with this as anyone. But since that Burns book nobody says these things. But Billy the Kid always blamed Chisum for much of the trouble he got into. So you see, although that book was very enjoyable to read, very entertaining, it isn't the full story of it, but only one side." That, she concludes, is the trouble with history. But then, in the best left-handed compliment Burns's book may ever get, she says: "If it wasn't for that book, there

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*Harry Fleischman

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SCRIBNERS

wouldn't be all this: that book started it all," her hand sweeping outward in a gesture that includes all of Lincoln, its festivals, museums, the entire legend itself and what it has meant to New Mex-

ico—and, indeed, the entire Southwest. That may well be the trouble with the way this history has been given to us, but that is also the whole truth about *The Saga of Billy the Kid*. □

The Guru Absconds

THE SORCERER OF BOLINAS REEF.
By Charles Reich. Random House. 250 pp. \$8.95.

PETER DREYER

Western thinking is to a great extent governed by a kind of race-track mentality. Either you back this horse or you back that one. The great thing is to find your panacea. Perhaps this is a consequence of the need of lawyers and educators to formulate precise definitions in a fuzzy world. Charles Reich, who as sometime professor of law has been both, is a good example. All through this monitory autobiography one longs for him to hedge his bets and relax. He never does, and when we finally part company he is taking yet another long shot.

Not that this is simply an account of academic and legal discombobulation. It is a tale of fear and loathing in a world which lacks a coherent sense of priorities, a world in which self-delusion has become a social imperative, schooled and officed into a captive consumer-bureaucracy by teachers and lawyers who are probably their own worst victims. "All of those years were spent in a kind of insanity of isolation, for no one ever touched me and I touched no one," says Reich. His whole life has been a vain search for the sense of reality most people are said to take for granted.

The book commences with the young Charles viewing the General Motors "Futurama" at the New York World's Fair in 1939. Not unnaturally in an 11-year-old, he is deeply inspired by this vision of the Shape Of Things To Come à la Robert Moses. He dreams of being President, and of "all the things I would do to improve the country." Progressive elementary school, progressive high school, Oberlin and Yale behind him, he takes the first tentative steps on the high road to office. He is fortunate

Peter Dreyer's latest book is his biography of Luther Burbank, A Gardener Touched with Genius (Coward, McCann & Geoghegan).

enough to be appointed law clerk to Justice Hugo L. Black, and is befriended by the "electrifying" William O. Douglas. But joining a prominent law firm "noted for its identification with Yale Law School, New Deal liberalism, and civil liberties," he finds himself far from happy. Eisenhower's Washington seems "a prison of loneliness and exile," a world where "the spoken word meant little and the written word still less." He discovers that he is profoundly out of step with the elite (sometimes called the Club) who "run" things from the commanding heights of government, law schools, courts and firms like his own, a caste "that shared certain assumptions and values, and made basic decisions without offering them to anyone as a choice." Favorite terms of approbation with these Ivy League overachievers are "tough-minded" and "hard-nosed." Reich cannot concur:

I deeply felt that "toughness" was based on a mistaken view of human beings, that it was in the long run an unwise and unworkable way to live and govern. . . . But I was fearful of speaking out. I felt that if I argued strongly for a belief in the goodness of people, I would be punished by a loss of respect, perhaps a demotion from the higher ranks of the Club, which as a top achiever I was privileged to occupy. I felt I needed to hold onto that status for security because of the special perquisites it brought me, because it was my chief claim to manhood at a time when my personal life did not show the same kind of success.

In 1960, fleeing the hard-boiled Washington world and its bleak pleasures, he joins the faculty of the Yale Law School. While enjoying all the privileges and facilities of that aristocratic institution, in love with Yale and professorhood, he is still desperately lonely, an educator who has himself not learned to live, "who strained and struggled, who bit fingernails down to the quick, who chewed paper and rubber bands and handkerchiefs and towels until my teeth chipped . . . who sweated until my shirts were drenched and smelly, who shook and trembled, who strained and forced, who lived each moment by a titanic effort of the will. . . ."

But salvation is at hand. On a visit

EMIGRANT

*Gifts clutched to my breast
dark bread, crochet hook
one book of poetry—
and I am gone
Mother's easy tears
in my eyes gun-metal
like Father's.
The sea spreads wide.*

*Seasick
I lie awake afraid
of sinking alone
—in the far country
will I learn new words
for bread, love, home?*

*The queasy feeling grows
while the sea rocks
me a proposal
—when a man calls
landfall.*

*Ghosts bickering about me
I trip down the gangway
and fall headlong
into the new world.*

Barbara Adams

to Berkeley in the summer of 1967, aided by the kind offices of sundry good-natured freaks, he discovers the soft world. This leads, of course, to the writing of *The Greening of America*, with its rhapsodies to bell-bottoms and old-fashioned peanut butter. That book, in retrospect, seems to some to have been the death knell of hippiedom, defusing the counter-culture by swamping it in gush. At any rate it provided a convenient label for its tombstone in the celebrated "Consciousness III."

It brought Reich celebrity. But although by 1971 "I had achieved external success, an inner voice told me that my world was actually narrowing and becoming more desolate, and that I felt profoundly unhappy." Returning to the Bay Area that year he is introduced to sexual encounters with a series of young men hired from a San Francisco "model" agency. Three years later, aged 46, he finally achieves a heterosexual relationship. If it seems prurient to cite these particulars in a review, it should be observed that to Reich his liberation is in large degree sexual liberation, his repression sexual repression. We take leave of him on the beach at Bolinas, donning a sorcerer's cloak, inherited (he informs us with ample quotation) from Walt Whitman. "Calmly and quietly and reverently, let us enter the new world," he adjoins.

But is there a new world? Does the sorcerer have a cloak? Reviewing *The*

Greening of America for *The Nation* (January 18, 1971) Emile Capouya, though sympathetic to Reich's account of the fall of man in America, found his ecstatic community "descriptively inaccurate and prescriptively irrelevant." The poor who constitute the great majority of mankind, Capouya observed, are excluded from the equation: "the plain living and high thinking of Reich's program is a playing at shepherd and shepherdess—with the workers, as usual, being good enough to supply their betters with leisure, education, books, tape recorders and hand-held cameras."

While the fundamental change of consciousness Reich speaks of is a great need, perhaps our greatest, it is surely a mistake to confuse personal liberation

from repression with general liberation from oppression. The relation between public and private solutions was a problem the counter-culture had to come to grips with. To some extent it did so (though the answers have yet to be elaborated) but to this debate Charles Reich does not contribute. Neither does he attempt to deal here with the criticisms that were made of *The Greening of America*. It would seem that he is content to vacate the arena. Retreating from the hard-nosed, he has embraced the soft-headed, first in his ivory tower at Yale, now in chic Marin County. One suspects without being told that he is probably as lonesome as ever. What this sad book has to do with sorcery, or Bolinas, or reefs, is hard to say. Its lesson, I suppose, is simply this: go thou and do differently. □

for a few years under John Crowe Ransom, *Poetry* under Henry Rago—but *QRL* has the longest record. When you consider the fact that *QRL* has always been courteously edited in a businesslike way, and when you compare this to the hundreds of trashy, slipshod, rudely edited magazines we have known, you see what a blessing the magazine has been. By now the hundreds of other magazines have become thousands, and there seems perilously little for those of us who cherish the values of art to cling to.

For the past couple of years *QRL* has suspended normal publication while Renée and Ted have assembled three retrospective anthologies, one devoted to poetry, the second to prose, and the third to their special issues. These last are particularly impressive. They have been individual numbers of the magazine devoted to a single writer, to his own work and to pieces by others about him. They have always seemed to come at just the right time to turn attention where it needed to be turned, beginning with the special Kafka issue in 1945 and continuing through the years with others for Valéry, Marianne Moore, Pound, Leo-

Maintaining Standards: QRL

HAYDEN CARRUTH

Let me say at the outset that I have more respect and admiration for Renée and Theodore Weiss than I have for any other magazine editors I know. I met them only once as nearly as I remember, and briefly at that; it was a huge, confused cocktail party in New York years ago. My memory of it is vague. Otherwise our association has been entirely through correspondence, almost entirely with Ted, since he seems to have taken the more active, or at least more public, role in their work.

The truth is I don't really know them at all. Nor is my feeling toward them a matter of gratitude, for they have published only a handful of my poems during the past thirty years and have sent me many more rejections than acceptances. No, when I say I have personal affection for them I mean I have a strong affirmative sense of them as persons who are at the same time editors. And I don't see how any writer old enough to have observed them at work over these thirty years, or even for shorter periods, can fail to share my feeling.

I remember I first saw the *Quarterly Review of Literature* shortly after the war, probably in 1946, when it was coming from Chapel Hill, and then over the years continued to see it fairly regularly as it followed Renée and Ted from

Hayden Carruth is a poet, novelist and critic. His most recent books are For You (New Directions) and The Clay Hill Anthology (Prairie Press).

place to place; a rather long stop at Bard College, another more recently at Princeton. But always the same sturdy, simple format, the same high quality of contents, the same impersonal tone of editorial ambition and integrity.

At which point I must draw a distinction. There are different ways to edit magazines. Cid Corman, for instance, who is another editor for whom I have the highest regard, has used his magazine, *Origin*, as a programmatic, even doctrinaire, instrument for the promotion of a particular kind of writing, what has come to be known as the Black Mountain school of poetry. The anthology Cid made a couple of years ago from the three series of his magazine, entitled *The Gist of Origin*, is an exciting history and a valuable collection of theoretical statements; anyone who has not read it certainly should do so. But Renée and Ted have looked at literature differently. It is as if they trusted literature, the whole concatenation of impulses and influences, to choose its own directions, while they observed it and recorded it, using their magazine to print the best work they could find, wherever it came from, and insisting always on high standards. I think this is the hardest kind of editing there is.

The maintenance of standards: that is the key to what they have done. For all these years the *Quarterly Review of Literature* has stood for utterly impersonal devotion to art as the formative element of civilization, the most excellent human endeavor. Others have done it too, of course—the *Kenyon Review*



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pardi, Hölderlin and Montale. Each was a remarkable performance. To have them

Quarterly Review of Literature: 30th Anniversary Poetry Retrospective. Edited by Theodore Weiss and Renée Weiss. Vol. XIX, 1-2, 1974. 556 pp. \$5.

Quarterly Review of Literature: 30th Anniversary Prose Retrospective. Edited by Theodore Weiss and Renée Weiss. Vol. XIX, 3-4, 1975. 602 pp. \$6.50.

Quarterly Review of Literature: Special Issues Retrospective. Edited by Theodore Weiss and Renée Weiss. Vol. XX, 1-2, 1976. 565 pp. \$6.50. (All from 26 Haslet Ave., Princeton, N.J. 08540.)

together in one volume is a literary treat. Yet the same must be said for the anthologies of miscellaneous poetry and prose—miscellaneous only in their widely representative quality. Hundreds of authors are included. Naturally it would be impossible to say that one magazine has printed all the best work of its time; but I will risk saying that everything, without exception, in these three volumes belongs among the best. The three books make a splendid review of what has happened in American literature during the past thirty years.

A salute and a laudation, therefore, to Renée and Ted Weiss and their *QRL*! What an accomplishment. And it is here, available, a pleasure and an instruction, as their continuing personal presence is an indispensable example. May all three be with us for a long time yet. We need them. □

walked under the "Spirit of St. Louis," been dwarfed by the five-story film of flight; giggled at Barney Oldfield zipping around a race track, bug-eyed the lunar missiles and skylab, and altogether shared the carnival pleasures encased by the architects famed for the Dallas/Fort Worth airport, a field as big as all Manhattan.

To what avail? The rare visitor will ask that, I suppose, and maybe a confirmed groundhog—and an acrophobe at that—shouldn't venture to describe the place. (Certainly the only member of the press who failed to identify the clip-haired, clip-faced, clip-voiced engineer at the mike as astronaut/director Michael Collins must cite such limitations from the first.) On the other hand, it's not everyone who comes here *tabula rasa*, so to speak. Not a tear drifts down my cheeks for the old musty predecessor—the Smithsonian's Renwick Castle where more sentimental souls could inhale the aroma of oak cupboards and wobble contentedly on the unvarnished floors that were so in keeping with the Tinker Toy planes aloft.

If you understand, then, how little I am impressed by the 280,000 square feet of marble used here or the 500 tons of steel, you will appreciate my impartial admiration for the lean strength of the tubular trusses by which architects Hellmuth, Obata and Kassabaum, Inc. (HOK) of St. Louis string the planes on high, like Calder mobiles. You will trust my appreciation for construction that went like clockwork and came in a million or so (one can be somewhat loose about millions) under budget.

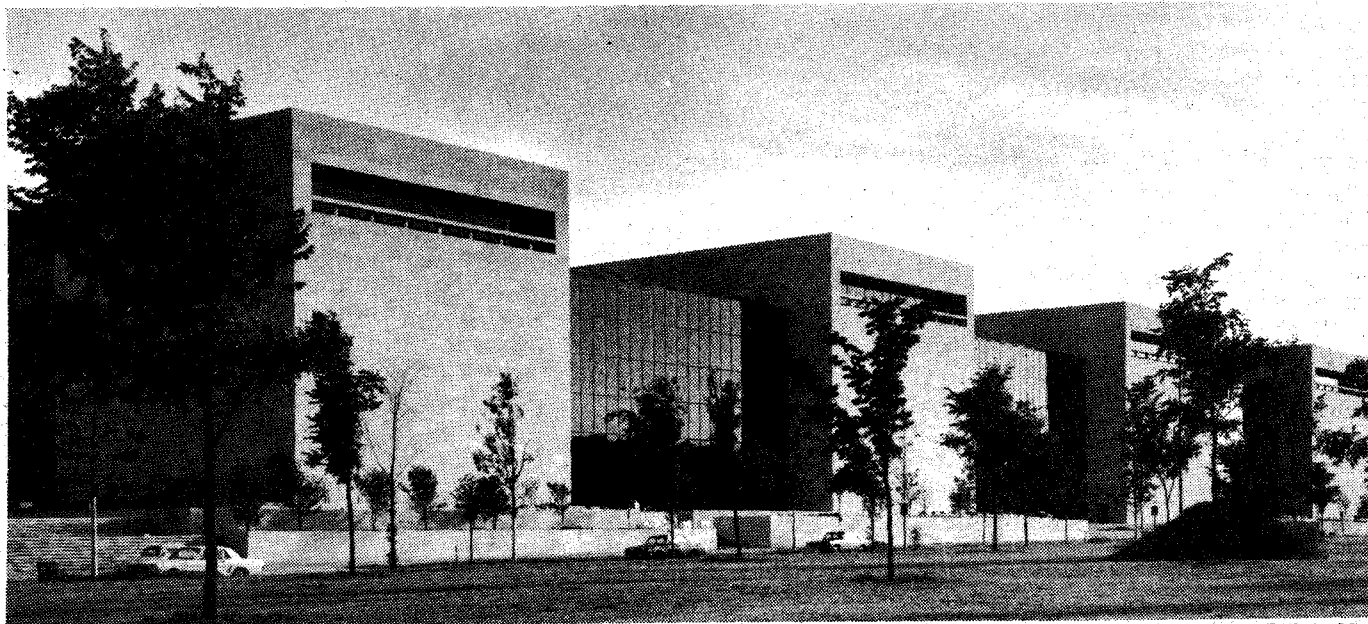
Talk about "classical symmetry." These glass-filled cubes possess a repose

ARCHITECTURE / JANE HOLTZ KAY

The new National Air and Space Museum is not so much a museum as a glass-encased armature, stretching over the acres, jutting in and out along the Washington Mall. It is a "hymn to an airplane hangar," as has been said, dangling, supporting or displaying hundreds—nay, thousands—of objects in search of romance. The structure is 685 feet long, 82 feet high and cost \$40 million (plus less visible contributions totaling perhaps a third that sum, primarily from the armed services, to build interior exhibits). The objects are planes: the romance is America's an-

cient if now limp affair with flight.

And if the crowds at the new museum are any proof, never has money better served to recharge a dying affair. The millionth visitor arrived on the twenty-fifth day last summer; the second million crowded in during the next twenty-four days. By early fall, 3 million had passed through the gates beneath murals that look like McDonald's vision of a space-age restaurant. If the traffic keeps up, as every sign indicates it will, when this superscale glass and marble warehouse celebrates its first birthday, 14 million folks will have gawked at and



Barbara Martin

to end all repose as they line up along the mall. And inside, the loftiness of that space—blue wall, blue jet, blue rugs—the harmony! Poised perfection; facelessness. How apt. Who can resist this sarcophagus of the air age? The art of hiding the color of interior razzle-dazzle behind a computer-age façade is here far advanced. The zesty exhibitionism inside does not peek out from these formidable shells to nudge the pomposity of Washington architecture.

Razzle-dazzle it is indeed. Accept this as a good show no matter how little inclined you may be to get pleasure out of "Milestones of Flight" and "Hall of Air Transportation"; no matter how unlikely you are to perceive photos of air and space as "an art collection." Incontestably, this is a carnival that lifts the drab curtain of dailiness from stalled planes and noise-polluted airports, that shoots animation into the cold and lifeless image of air technology.

Learning was never livelier—stand on Jupiter and view the moon, the stars, the rotating earth in these 55-by-75-foot cubicles. There is life in the universe and life aplenty here, whether in waxworks or lit panels, films or moving dioramas. Do you want to know how long it will take to reach the stars? Push a button. Or see sky diving to the tune of *Come Josephine in My Flying Machine*. Rickety-rack, and off you go on bygone trips. Above the crowds and down again. "O.K. the ride's over. Now you're an honorary barnstormer," says a tape. No more will you fail to comprehend cold fronts and warm fronts, nose cones and Air Traffic Control complications. And above all, you will learn to know the Enemy: "Friend or Foe? Can You Identify These Planes?" says the sign. Well, can you? Do you know the differences in vertical flight? Can you tell the difference between a Congreve rocket and a Nike Cajun? And, more's to worry, *can your children?*

It will exhaust you, but you will have your money's worth when you've seen the "Mobility for Mankind Theatre" and learned how far our wings have taken us. "We are much more willing to move than our grandparents were . . . the old differences between cities and regions have disappeared," another voice intones. By the time you go home, you had better know that some planes are flown by the Navy, some by the Marines, some by the Army, some by private Texans, and some (called rocket and painted white like candy canes)

by nobody at all. "If we've done this in thirty years think what we can do with 100 years," still one more voice declares. Think, boys and girls! The architecture outside is not the only urban design message the National Air and Space Museum will impart, "Now the older human scale has disappeared," the impressive five-story IMAX movie will let you know. The plane "has changed forever the patterns of our imagination." In its movieland we waft over the trees, soar with human kites. Ahhhh, how engaging the revolution in mobility becomes! How seductively packaged. How coaxingly sold. What fun and games are here—balloons and puppets and exaltation for the "triumph over limitations" of the new air age. *It is fun.*

Come. See. Be conquered. Agree: the nation that made it to the moon (if not home from work); that dropped the bomb at Nagasaki (and leaks nuclear residue in the neighborhood fishpond); that sold how many million hamburgers (and canceled how many food stamp programs?) should have a glass showcase to its triumph over air and space. Let us fly from earthly miseries into this space. It is an architectural achievement indeed to house all this, to restore our flagging faith in the machine and breed a generation of those who soar and sigh for "conquering space." Of those who argue otherwise, I ask: where better should the money be spent? Forty million dollars goes so fast these days. □

MUSIC

DAVID HAMILTON

The decline in popular favor of *Lohengrin*, long the most frequently performed of Wagner's operas, can be partly attributed to the proverbial shortage of Wagnerian singers—but only partly, for it can be cast satisfactorily without recourse to those special voices required for Isolde, Tristan, Siegfried and Brünnhilde (naturally, such voices don't hurt, if they are available). The opera's curious mixture of forward-looking mythological underpinning and old-fashioned grand-opera panoply presents a difficult challenge to the producer, one that was not at all solved by the late Wieland Wagner's handsome production, shown at the Metropolitan in 1966, which fixed the chorus stationary on risers and centered the principals within their own forward area. By visually negating the energy of the elaborate choral music,

Wieland crippled an important aspect of the opera in the cause of its underlying psychological and mythical values. It was a provocative production to think about, an unrewarding one to experience.

This time around, the Met has given full value to both aspects of *Lohengrin*, and made a rattling good show of it. All those excited mass responses that Wagner's music demands, and equally the elaborate processions that fill much of the second act, are well plotted by August Everding on Ming Cho Lee's ingeniously multi-leveled sets. The principals are well placed, too, though their individual gestural vocabularies have not been brought into much coherence—if Ortrud (Mignon Dunn) goes about shaking her fists in pagan fury, Lohengrin (René Kollo) ought not to be doing the same in Christian frustration. And Kollo, who owns that rare advantage among tenors of height without bulk, has not been taught how to get the most out of it, nor has the costumer helped, for his long cloak, handsome in repose, responds ungracefully to vigorous movement.

Except for the bridal chamber scene, where a flowery Victorian overlay muddles the basic medievalism, Lee's designs are striking and eminently practicable, modern in layout but realistic in detail. The special effects are well handled (although I couldn't see the swan from the left side of the house), and the lighting is really elegant, precisely timed and an integral part of the staging.

Best of all, the music really goes well, both its energy and its repose precisely formulated in James Levine's conducting. From the wonderfully controlled crescendo of the Prelude, each episode had character and motion—no easy task in a work rhythmically so limited. All the soloists sang strongly except Pilar Lorengar (Elsa), whose affecting musicality is marred by a persistent tremolo that made her often inaudible. Kollo is now singing more cleanly than on earlier recordings, and Donald McIntyre (Telramund) redeemed his rough work in last month's Mahler Eighth with much forceful, well-focused sound. The chorus has some patchy moments; perhaps these will improve as they get reacquainted with the opera.

The Met's other Wagnerian excursion in its opening weeks was *Die Meistersinger*, which remained much the same mixed bag as last spring, despite some cast changes. It was, however, a longer mixed bag—in fact, the first few performances offered Wagner's score in its entirety, probably for the first time in the house's history; regular readers will not have to be reminded that I consider

this a Good Thing. Later, some excisions were made to avoid costly overtime, but the chances are that this is still the most extensive version you will get to hear in the theatre outside of Bayreuth, and far more satisfactory than the butchered version next door at the State Theatre—where the City Opera has now taken another dip into Wagner. I saw the second performance of their new *Flying Dutchman*; what with the difficulties imposed by the strike, rehearsal accidents, and so forth, charity is no doubt in order, but except for the latent potential of Betty Jones's soprano, I heard nothing much to suggest that the company is equipped to venture into these waters.

The Barber of Seville in the same house was another matter, with Beverly Sills (Rosina), Henry Price (Almaviva), and Samuel Ramey (Basilio) all vocally fluent advocates of Rossini's florid humor; Spiro Malas (Bartolo) and Richard Fredericks (Figaro) somewhat less so; and Sara Caldwell a lively conductor once past a rather mannered Overture. But Miss Caldwell's production, full of elaborate sight gags, bird cages, a mime servant who upstaged most of the arias, and a full-scale "Beverly Sills Show" inserted in the Lesson Scene, constitutes one of the more monumental irrelevancies in the history of operatic production. Rossini might well have said: "Very funny, but who wrote it?"

The Metropolitan's early weeks offered a reprise of last season's new productions of *Aida*, *Le Nozze di Figaro* and Puccini's *Trittico*, plus a revival of *Il Trovatore*—none of them an unmixed delight. Levine brought more point and vitality to *Trittico* than did Sixten Ehrling last year; Kazimierz Kord kept *Aida* moving rather well; Gianandrea Gavazzeni trod cautiously through *Trovatore*, except when Shirley Verrett (Azucena) or Luciano Pavarotti (Manrico) took charge, and the point of importing Leopold Hager all the way from Salzburg to lead a routine *Figaro* entirely escapes me. If *Lohengrin* represents the level to which Met casting now aspires, then nothing else so far this season has measured up. Every one of these other performances had its bright moments (Judith Blegen's Susanna and Elena Obraztsova's Amneris, for example), but also its great gaping holes (the singing of Evelyn Lear as the Countess, the "acting" of Rita Hunter as *Aida*). Still pot luck, in other words. □

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THEATRE

HAROLD CLURMAN

A close friend, a person of excellent taste and judgment, found Harold Pinter's *No Man's Land* a spoof on the silly side of English deportment (Longacre Theatre). Others tell me it's about death. The play ends with these lines, "You are in no man's land. Which never moves, which never changes, which never gets older, but which forever remains silent." Does this speech jibe with both interpretations?

There are numerous others. Almost everyone agrees: the play is "puzzling" and, as such, thoroughly enjoyable. A reviewer challenged me teasingly on opening night to set down in a hundred words what the play means. Recently I wrote in the Kennedy Center program an explanation for the benefit of the bewildered. It was based on what I published in *The Nation* of August 16, 1975 on seeing the play in London. Here is the play's plot as I summarized it on that occasion.

"It presents two writers who may have known each other in their nonage, who, now in their 60s, meet each other by chance. One of the men has become affluent and famous, the other has won little recognition; he is poor and looks rather the worse for wear. His attitude toward the luckier man appears deferential, but one perceives in his semi-servile

stance a touch of superiority, an innuendo of vindictive malice.

"The successful writer has become a drunk, lives in a constant alcoholic haze and is so often *non compos mentis* that he must be taken care of (in style) by two cockney servants—one of them a near thug, the other more slimy and with pretensions to an exotic worldliness. Both servants are peculiarly arrogant on account of their position in respect to their master's high estate, while being half-consciously contemptuous of his present impotence. (One might think of these two rather sinister figures as agents, managers or sundry other such helpers who surround and run interference for moguls of the literary, entertainment and sport milieus.) The unsuccessful writer is treated by the servants as a shabby intruder who at any moment may be thrown out; they refrain from doing so because their distinguished boss not only tolerates the man but credits him with some vague authority.

"There is a strange connection between the two writers. Is it possible that at some earlier period the 'loser,' as he avers, has had an affair with the wife of the opposite? This may only be a way of taunting his illustrious rival, but it does not prevent his offering to serve him in every respect."

On reading my Kennedy Center piece, the two actors who play the central characters (John Gielgud as the "loser," Ralph Richardson as the "winner") both declared me mistaken. They had their own opinions. But when interviewed they confessed, tongue-in-cheek no doubt, that they weren't at all sure that they knew what the play was supposed to mean. In this they follow the author's own tack: a refusal to say anything that can be readily formulated.

I too now withhold any further elucidation, though I feel that my inclination to see a certain autobiographical element in the play (Pinter "thin" and Pinter "fat") is closer to the play's argument and structure than anything else I have heard said about it. All of us are content for future spectators to view the play as they like.

On second sight it struck me as much funnier than it did in London. The performances are brilliant. John Gielgud's every move, every reading, every facial expression has about it a catlike subtlety, a combination of cunning, elegance and disdain, always delightfully charming and impeccably right. Ralph Richardson, formidably Blimpish, cynically "wise," grand and nobly destroyed, speaks his every word and phrase with so musical a sense of color and meaning that one

is moved to exclaim that his duet with Gielgud turns the evening into a veritable stage concert.

Peter Hall's direction, John Bury's set and lighting, Terence Rigby and Michael Kitchen, in subversive support of the two champions, are as near perfection as one is likely to witness for many a long day. □

DANCE

NANCY GOLDNER

In the final week of the Joffrey Ballet season Twyla Tharp gave her host and her audience a dance to dream upon. It is called *Happily Ever After*, in reference, perhaps, to the beguiling country music to which this dance is set, and most certainly descriptive of the ballet's mood. *Happily Ever After* is Tharp's most cheery work so far and, just possibly, her best. The style is no less Tharpian than before, but in country music the style has found its perfect template. Both share a compressed energy, a glee in virtuosity, a degree of bustle and total contentment in using the most complicated route to nowhere. Both Tharp and her musician friends—"Snuffy" Jenkins, "Pappy" Sherrill and the Hired Hands (Harold Lucas and Kenny Meggs)—believe in the sublimely ridiculous. In the third, last section of the new ballet six dancers embark on a marathon relay race in which the finish line only bounces them back to the starting line. We see these elegantly dressed people loping back and forth across the stage, devotedly obeying all the rules and regulations of a nonsensical yet joyous world. In thinking about why Tharp's world strikes me as joyous, I come to only one conclusion: because it's dancing. And when I think about the joyousness of the music, it seems to boil down to the very act of making music, of bowing the fiddle until the strings pop.

Country music has also extended Tharp's style, made it bigger, bolder, more sweeping. She still has her dancers oscillating their joints in crazy quilts of motion, but now the bodies have more swing, especially in the torso. Instead of breaking the body down into minuscule parts, Tharp has galvanized a bunch of disparate sparks into one glowing flame, sometimes a firecracker. This comparatively unified use of the body gives her a new freedom with space. Nothing is off limits. They're dancing on the floor. They're dancing in the air, and around and through each other. The kick of the

EARLY WARNING

*When the weather turned
Crows settled about the house
Cawing daylong among the new leaves.
It would be a hard spring,
Folks said, the crows—
They know. There are folks
Up near where I come from
In Mississinewa County
Who study such things.
Folks who believe tornadoes
Are alive: that polluted streams
Rise from their beds
Like lepers, following after
Some great churning, twisting cloud.
With their own eyes
They've seen a cyclone stop,
Lap up electricity
From a substation, then make
A right-angle turn
And peel the roof off some
Prefabricated egg factory.
Thousands of hens, who've never seen
The light of the sun, or
Touched earth with their beaks,
Go up the funnel like souls to God.*

Jared Carter

leg begins way up in the hip, and the arm swings begin way down in the shoulder blades. This is most true in the broad, linear dances of the last section, but even the tight matrices of movement marking the first section have new breadth and, consequently, clarity.

Calling *Happily Ever After* a truly American dance is tempting until one remembers that people responded to Balanchine's early work in this country with the same epithet. My guess is that the American taste of Balanchine's work was actually its newly realized authenticity. An established language had found its stylistic center and was home free. Tharp is not toting the centuries behind her, but in *Happily Ever After* one does intuit a clearing of the decks and a renewal. If one cares to associate these intuitions with America, that is one's prerogative in this anniversary year.

Happily Ever After begins with Shelly Washington in a solo without music. The musicians, perched high on

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the back wall of the City Center stage, loom at us like kindly ghosts through a scrim and thick haze of darkness. One of them calls out a "let's begin," the music starts (*Texas Quickstep*), and Washington promptly goes dead on the floor. Overlapping her collapse are entrances of her colleagues—Jennifer Way, Tom Rawe and Christine Uchida—all from Tharp's own company. Two promises are made and kept. First, this section will be a brilliant exposition of entrances, each cascading over the previous dance in a continual waterfall of energy, a series of resurgences with plenty of pratfalls but no relapses. Second, the dances will characterize the dancerly personalities of Tharp's company, a point of view realized in Santo Loquasto's costumes as well. Several dances into the section, after Washington and friends have whipped through a lexicon of misfiring *pas de deux* with a slightly befuddled Tom Rawe, Washington finally gets her timing right. Caroming head-first from the wings, she arrives in Rawe's arms in one bundle, exactly in time with the fiddlers' last resounding scratch. This moment of triumph by no means concludes the section but that one recognizes it as Washington's apotheosis indicates how closely and dearly we follow the fortunes of each dancer and his or her relationships within the quartet. Each of them has many moments of glory—Rawe's push-

ups, Way's spinning dance, Uchida's luscious extensions—and that each of these feats of prowess also satirizes the concept of prowess in no way deflects from the expertise and force of the dancer and the dance.

The second section is a solo, which at the first performance on November 3 was danced by Tharp and, at the second, the one I saw, by Joffrey dancer Ann Marie De Angelo. This piece of casting I read with trepidation, for De Angelo, although a very able technician, suffers from the child prodigy syndrome. For the most part she has been assigned technically exploitative parts, decked out in big tutus she can fill with everything but authority and charm. A problem child, possibly an incipient freak, she could have been a prime target for Tharp's sometimes jaundiced eye toward ballet. Tharp gives her a virtuoso solo all right, and because it is so dazzling in speed, and so delicate in its use of weight shifts, it humanizes De Angelo. Dressed in tight blue jeans and a starched white cotton blouse, her hair coiled in braids, De Angelo for the first time looked like a ballerina, not to mention a terrific dancer. At the end of her dance she faces the wings and trudges off as though oblivious of the points she has just scored. I wish Tharp had allowed her just one little bow, but although one can carp here about Tharp's niggling insistence on an

ironical viewpoint, one cannot deny the generous outpouring of the dance itself.

The third and final section is a formal exploration of folk dance motifs. It uses conventional forms of structure—repetition, theme and variation, accumulation, canons, a fugue or two—and conventional patterns for the cast of five men (all but Rawe from the Joffrey) and Rose Marie Wright (from the Tharp wing). The music is a repeat of *Cacklin' Hen and Rooster Too* from the first section, now toned down to loping tempo in honor of the formality of the choreography. Although humorous and at times rambunctious, the dance has the stately largesse and insistence of a ballad. Structurally, this is Tharp's most austere dance since *The Fugue*, but when poised against the most expansive movement Tharp has yet used, it comes out with all the dignity and peace of rolling farm country. Santo Loquasto dressed the dancers in this section in black shirts and pants, but I think it's the creamiest white of all the white dances Tharp has so far made. □

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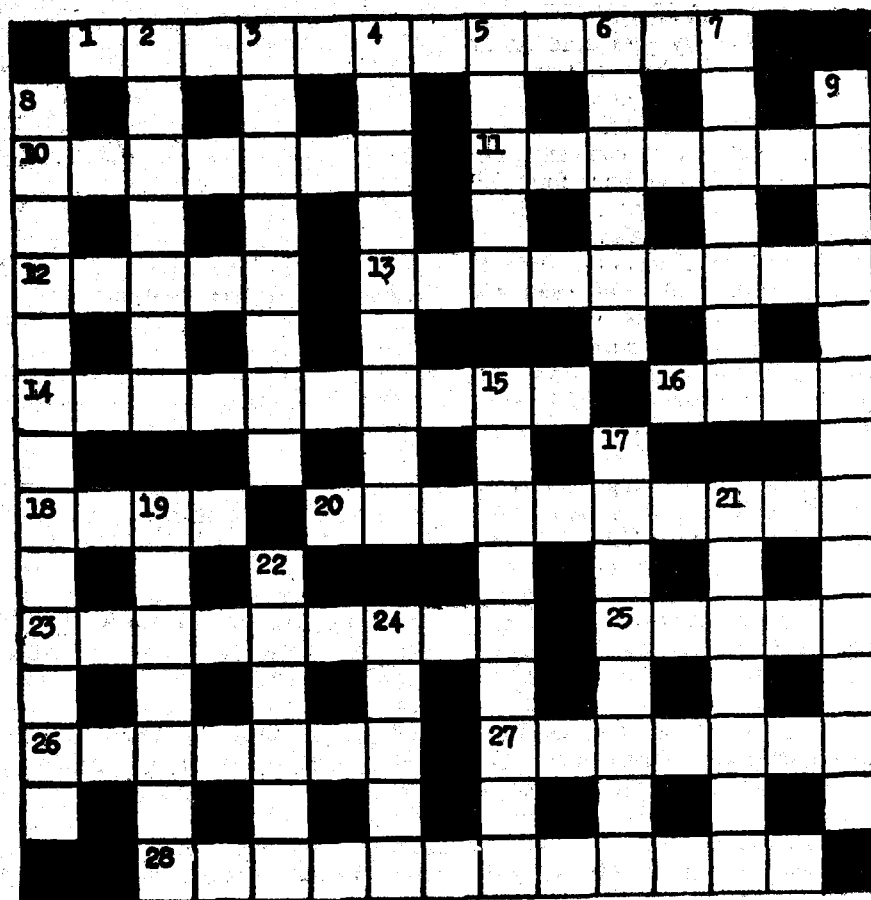
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Crossword Puzzle No. 1656

FRANK W. LEWIS



ACROSS

- 1 Not true style with the pen—such a bad confession is incredible! (5,7)
- 10 Halls aren't filled with such a performance. (7)
- 11 A mate urgently starts what should be a non-paying proposition. (7)
- 12 A fiber of leaves, is all. (5)
- 13 In a cautious manner, delay drug production. (9)
- 14 It might be an indication of a move to the left, not necessary if one's followers see the light. (4,6)
- 16 Point to a place of iniquity, with a supposedly original plot. (4)
- 18 Thrown by those on the stage. (4)
- 20 One might be pitched fairly low, though the score should reflect the fact that it was hit. (10)
- 23 Does it imply an equitable swap in such places as Leipzig? (5,4)
- 25 What is good for the French is found inside an animal. (5)
- 26 One of these was loved by a lass in a G & S sub-title. (7)
- 27 As far as one knows, a superior officer is in top form. (1,6)
- 28 One might call it aside, or as it appears in the press, a weight. (5,7)

DOWN

- 2 Evidently Sinatra would be an ill-disposed workman. (7)
- 3 Such a TV show might not be commercially productive, though it shouldn't need cleaning up. (8)
- 4 One who gets a conveyance of sorts

- might make game or get set badly. (9)
- 5 A made-to-measure play. (5)
- 6 Strangely enough, they're where many people sit on Sunday afternoon. (6)
- 7 A fluttery eyelid on the first of December, it's conceded. (7)
- 8 The shape you find things in here may determine what shape they find you in. (8,4)
- 9 A religious type, such as Carter admitted being, might have to sit awkwardly—you might consider one a stick! (7,6)
- 15 Er, you might find it so with Cotton, for example, in consequence. (9)
- 17 As brides, not usually found near the coast. (8)
- 19 The itch that is found in rough encrustations? (7)
- 21 Someone like Lancelot comes up with a fish, or at least a fish dish. (7)
- 22 A vegetable has quite a bit in it, served with game. (6)
- 24 A place like Capri, where loving couples walk? (5)

SOLUTION TO PUZZLE NO. 1655

ACROSS: 1 Outcast; 9 Dried up; 10 Mediate; 11 After; 12 and 13 Allowing; 14 Stencil; 16 Dippers; 18 and 29 Fish out of water; 21 and 25 Torpedo tubes; 24 Spent; 27 Cured; 28 Amiable; 30 Defuses; 31 Deduced. DOWN: 2 Thistle; 3 Adder; 4 Topsail; 5 Fumbled; 6 Rodeo; 7 Opaline; 8 Sledges; 15, 17 and 26 Cooperate; 18 and 5 across Fast and furious; 19 Sheriff; 20 Tracers; 21 and 1 down The good old days; 22 Erratic; 23 Ordered; 27 Cowed.



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